# CERTIFICATE.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 278.

R. M. PATTERSON, EDWARD JANSEN, SVEN FREEMAN, ET AL., APPELLANTS,

*vs.*

THE BARK "EUDORA," WHEREOF ALFRED E. DICKSON IS MASTER.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED MARCH 31, 1902.

(18,459.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1902.

1 In the United States Circuit Court of Appeals for the Third Circuit.

B. M. PATTERSON, EDWARD JANSEN, SVEN FREEMAN, E. THOMPSON, Simon Anderson, and Karl Stevenson, Seamen, Appellants,
*vs.*
THE BARK EUDORA, whereof Alfred E. Dickson is Master.

Appeal from the district court of the United States for the eastern district of Pennsylvania.

Before Acheson, Dallas, and Gray, circuit judges.

*Certificate to the Supreme Court.*

This cause came before this court by the appeal of B. M. Patterson, Edward Jansen, Sven Freeman, E. Thompson, Simon Anderson and Karl Stevenson from the decree of the district court of the United States for the eastern district of Pennsylvania, sitting in admiralty, dismissing their libel against the British bark Eudora, on board of which vessel they had lately served as seamen. The suit was against the vessel for wages alleged to be due the libellants.

The parties in the suit filed in the district court the following stipulation and agreed statement of facts, to wit:

"*Stipulation as to Facts.*

"And on June 14, 1901, it is stipulated that at the argument of the above case, the following facts shall be admitted, with the same effect as if proved by depositions, taken in accordance with the provisions of the Revised Statutes or the rules of this court.

"1. That the bark Eudora, at the time hereinafter men-
2 tioned, was a British vessel duly registered under the laws of Great Britain and hailing from the port of Halifax, Nova Scotia.

"2. That on January 22, 1900, the said bark was in the port of New York, and being about to proceed to sea, B. M. Patterson, Edward Jansen, Sven Freeman, E. Thompson, Simon Anderson and Carl Svenson, the libellants, one or more of whom were American citizens, shipped as seamen thereon, signing the written shipping articles required by the British law, for 'a voyage from Portland, Maine to Rio and for any ports or places within the limits of 65 degrees north and 70 degrees south latitude, trading to and fro, as required, not to exceed twelve calendar months, final port of discharge to be in the United States of America or Canada, at the rate of one shilling for forty-five days and twenty dollars per month thereafter.'

"3. That the time said shipping articles were signed the sum of twenty dollars was paid on account of each of the libellants, and with the consent of each of them to the shipping agent, through

whom they had been employed by the master of said bark. Said payments were made on account of indebtedness due by the said libellants to the said shipping agent for board and for goods sold to them by him.

"4. That as required by the laws of Great Britain, the said seamen were engaged in the presence of the British vice-consul at the port of New York and said contract was made with his sanction.

"5. That thereafter said vessel proceeded upon a voyage to Turk's island, and thence to Philadelphia, when and where
3 said voyage was completed and the said libellants were discharged; that during the whole time the libellants were in the service of said vessel, they performed their duties as seamen; that at the time of the arrival of said ship at Philadelphia and at the time they were discharged, no wages were due to the libellants by the terms of the contract contained in said shipping articles.

"6. That the libellants each claim to recover the sum of $26.66⅔, being wages, at the rate of $20 per month from the time of shipment on January 22, 1900, until the date of their discharge on March 3, 1900.

"7. That Karl Svenson, one of the libellants, designated in the libel as Karl Stevenson, has signed the shipping articles at the British consulate, in Philadelphia, acknowledging the receipt of all wages due him for said voyage, and freeing the bark from all liability therefor

"8. That proof of the law of Great Britain is waived, and it is agreed that the law therefor as contained in the printed reports, statutes and text books shall be received with the same effect as if regularly proved, subject, however, to the rights of the libellants to object thereto upon any other ground than the mere formality of proof.

"9. The contract specified in said shipping articles, and the payment of said sum of twenty dollars to the said shipping agent were not contrary to or prohibited by the laws of Great Britain, but it is admitted, for the purpose of this case, that said payment is contrary to the act of Congress of December 21, 1898, if that act is
4 properly applicable to the contract in this case.

J. H. BRINTON,
*Proctor for Libellants.*
H. L. CHEYNEY,
JOHN F. LEWIS,
*Proctors for Claimant.*"

The act of Congress referred to in paragraph 9 of the above stipulation is the act approved December 21, 1898 entitled—"An act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce." 30 United States Statutes at Large pages 755, 763.

The facts of this case being as above set forth and this court desiring the instruction of the honorable the Supreme Court of the United States for the proper decision by this court of the subjoined questions or propositions of law thereon arising, it is now ordered

that the following questions or propositions of law, together with the foregoing statement of the facts upon which they arise, be and the same are hereby certified to the Supreme Court agreeably to the provisions of the sixth section of the act entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, to wit:

*First.* Is the act of Congress of December 21, 1898, properly applicable to the contract in this case?

*Second.* Under the agreed statement of facts above set forth, upon a libel filed by said seamen, after the completion of the voyage, against the British vessel, to recover wages which were not due to them under the terms of their contract or under the law of Great Britain, were the libellants entitled to a decree against the vessel?

In testimony whereof the undersigned the judges holding the said circuit court of appeals for the third circuit have hereunto set their hands and seals this nineteenth day of February 1902.

M. W. ACHESON, [SEAL.]
GEO. M. DALLAS, [SEAL.]
GEO. GRAY, [SEAL.]
*Circuit Judges.*

(Endorsed:) B. M. Patterson, Edward Jansen, Sven Freeman, E. Thompson, Simon Anderson and Karl Stevenson, seamen, appellants, *vs.* The Bark Eudora, whereof Alfred E. Dickson is master. Certificate to the supreme court. Filed March 6, 1902. Wm. H. Merrick, clerk.

UNITED STATES OF AMERICA, *sct:*

I, William H. Merrick, clerk of the United States circuit court of appeals, for the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original certificate of the court filed March 6, A. D. 1902, in the case of B. M. Patterson, Edward Jansen, Sven Freeman, E. Thompson, Simon Anderson and Karl Stevenson, seamen—appellants, *vs.* The Bark Eudora, whereof Alfred E. Dickson is master—No. 26 September term 1901, on file, and now remaining among the records of the said court in my office.

Seal United States Circuit Court of Appeals, Third Circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia, this twentieth day of March in the year of our Lord one thousand nine hundred and two and of the Independence of the United States the one hundred and twenty-sixth.

WM. H. MERRICK,
*Clerk U. S. Circuit Court of Appeals, Third Circuit.*

7 [Endorsed:] No. 26. Sept. term, 1902. United States circuit court of appeals, third circuit. B. M. Patterson, Edward Jansen, Sven Freeman, E. Thompson, Simon Anderson and Karl Stevenson, seamen, appellants, *v.* The Bark Eudora, whereof Alfred E. Dickson is master. Certified copy of certificate for instructions from Supreme Court of United States.

Endorsed on cover: Certificate. File No. 18,459. U. S. C. C. of appeals, 3rd circuit. Term No. 278. B. M. Patterson, Edward Jansen, Sven Freeman, *et al.*, appellants, *vs.* The Bark "Eudora," whereof Alfred E. Dickson is master. Filed March 21", 1902.

# FILE COPY.

No. 278.

Office Supreme Court, U. S.
FILED
APR 17 1903
JAMES H. McKENNEY,
Clerk.

IN THE

# Supreme Court of the United States.

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**B. M. PATTERSON, EDWARD JANSEN, SVEN FREEMAN, et al.,**

*Appellants,*

*v.*

**The Bark "EUDORA," Whereof ALFRED E. DICKSON is Master.**

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**A Certificate from the United States Circuit Court of Appeals for the Third Circuit.**

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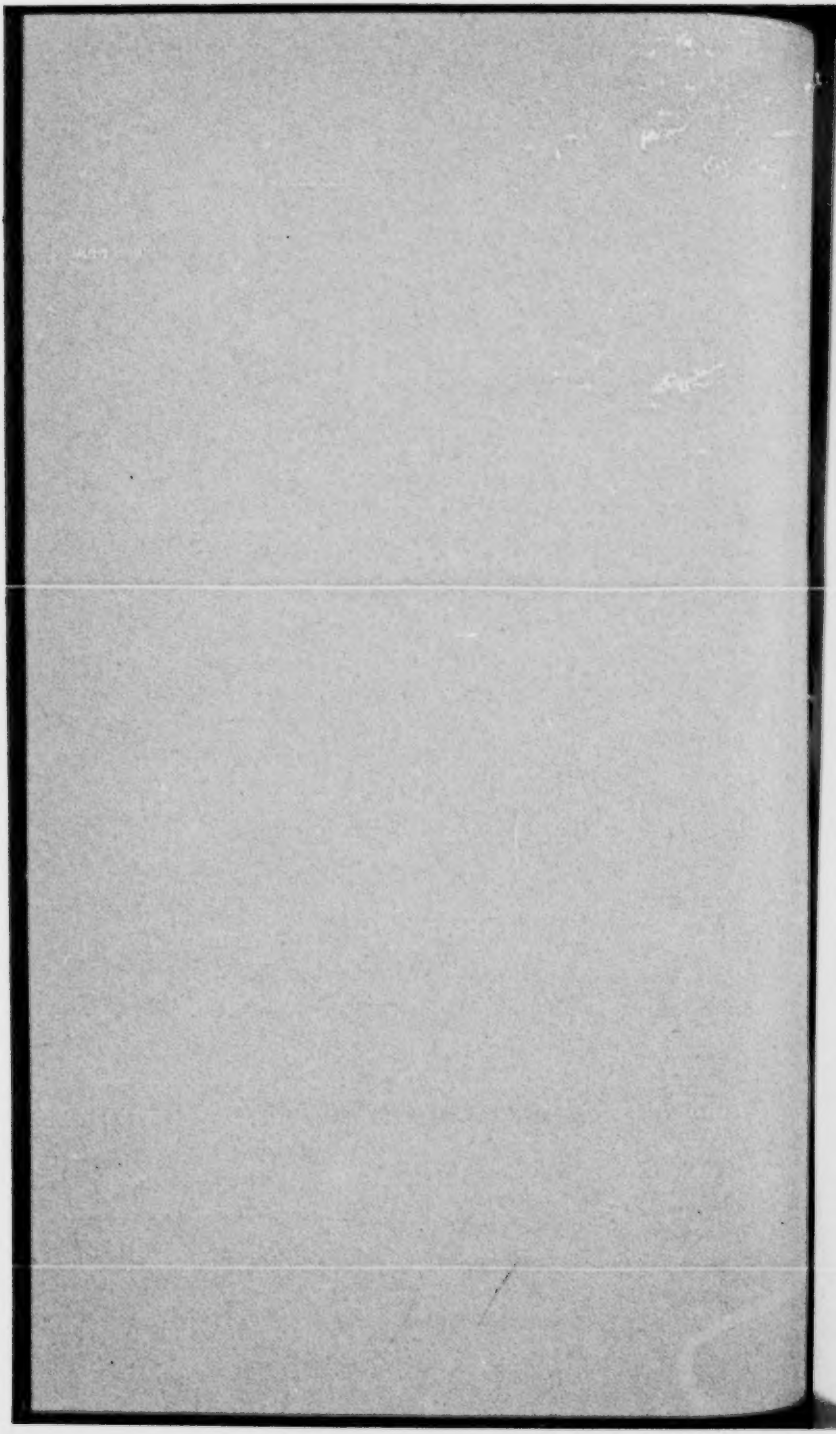
## Brief of Argument for Appellants.

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JOSEPH HILL BRINTON,
*Proctor for Appellants.*

1301 Chestnut Street,
Philadelphia, Pa.

Chestnut St.



IN THE

# Supreme Court of the United States.

October Term, 1902.

No. 278.

B. M. PATTERSON, EDWARD JANSEN, SVEN FREEMAN, *et. al*,

*Appellants*,

*v.*

Bark "EUDORA" whereof ALFRED E. DICKSON is Master.

On a certificate from the United States Circuit Court of Appeals for the Third Circuit.

## STATEMENT OF THE CASE.

The appellants filed a libel for wages against the British bark "Eudora" in the District Court of the United States for the Eastern District of Pennsylvania, sitting in Admiralty. An agreed statement of facts was filed to the effect that on January 22, 1900, while in the port of New York, the said bark sailing under the British flag regularly shipped and hired

the libellants, some of them being American citizens, to serve as seamen thereon for and during "a voyage from Portland, Maine, to Rio, and for any ports or places within the limits of 65 degrees north and 70 degrees south latitude, trading to and fro as required, not to exceed twelve calendar months; final port of discharge to be in the United States of America or Canada, at the rate of one shilling for forty-five days and twenty dollars per month thereafter." That at the time of shipment the sum of twenty dollars was paid on account of each of the libellants and with his consent, to the shipping agent, through whom the libellants were employed. That the libellants performed their duties, and upon the completion of the voyage, on March 3, 1900, at Philadelphia, Pennsylvania, demanded wages for the full term of service at the rate of twenty dollars per month. That the said contract of shipment and payment of the sum of twenty dollars as advanced wages on account of each of the libellants to the shipping agent as aforesaid, were not contrary to or prohibited by the laws of Great Britain, but that the said payment was contrary to the Act of Congress of December 21, 1898 (if that act be properly applicable to the contract in this case). Upon consideration of this statement and argument, a decree was entered dismissing the libel, whereupon an appeal was had to the Circuit Court of Appeals for the Third Circuit, which Court, by virtue of the provisions of the sixth section of the Act of Congress, approved March 3, 1891, certified the following questions to this court for a proper decision of the cause, viz.:

"*First.*—Is the Act of Congress of December 21, 1898, properly applicable to the contract in this case?

*Second.*—Under the agreed statement of facts above set forth upon a libel filed by said seamen, after the completion of the voyage, against the British vessel, to recover wages which were not due to them under the terms of their contract or under the law of Great Britain, were the libellants entitled to a decree against the vessel?"

## ARGUMENT.

Is the Act of Congress of December 21, 1898, properly applicable to the contract in this case?—or, in other words,

(I.) Does this act comprehend the shipment of a crew on a foreign vessel within the territory of the United States?—and, if so,

(II.) Has Congress legislative power to act?

(I.)

The Act is entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce"; but, before considering the substance of the Act, it is desirable to notice the more recent Acts leading to its adoption.

The first legislative enactment prohibiting advance wages was the Act of June 26, 1884, entitled, "An Act to remove certain burdens on the American Merchant Marine, and encourage the American foreign carrying trade, and for other purposes"; and this Act contained a clause making it applicable to foreign vessels as well as vessels of the United States.

This Act was amended by the Act of June 19, 1886, Chap. 421, entitled, "An Act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen and owners of vessels, and for other purposes." In this Act the clause relating to foreign vessels was omitted, and the following substituted therefor:

> "And any master, owner, consignee or agent of any foreign vessel who has violated this section shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for a similar violation."

Even though the full meaning of the legislature was not expressed in the Act of 1884, in its endeavor to regulate the shipment of seamen on foreign vessels, all doubt was dispelled by the later Act, in which the legislature was almost labored in its emphasis of the broad scope to be given to the Act in the establishment of uniform shipping laws.

The law thus remained until December 21, 1898, when the Act now under consideration was passed. This Act was designed to generally codify the then existing Acts relative to the service of seamen, as well as to modify or repeal all Acts inconsistent with their welfare, and to generally promote the interests of commerce. Some of its sections are limited to American vessels and to seamen shipping thereon. For instance Section 5 provides, that "Every seaman of a vessel of the United States shall be entitled to receive, at any port, one-half part of wages then due." Many sections expressly relate to foreign vessels in American ports. Section 24 provides as follows:

> "That Section X of Chap. 121 of the laws of Eighteen hundred and Eighty-four, as amended by Section three of Chapter 421 of the laws of Eighteen hundred and Eighty-six, be and is hereby amended to read as follows:
>
> "Section 10. (*a*) That it shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wage to any other person. Any person paying such advance wages shall be deemed guilty of misdemeanor, and upon conviction shall be punished by a fine not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months at the discretion of the Court. The payment of such advance wages shall in no case, excepting herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defence to a libel, suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or

other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be liable to a penalty of not more than one hundred dollars.

"(*f*) That this section shall apply as well to foreign vessels as to vessels of the United States and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for a similar violation; provided that treaties in force between the United and foreign nations do not conflict.

(*g*) That under the direction of the Secretary of the Treasury the Commissioner of Navigation shall make regulations to carry out this section. This section shall not apply to fishing or whaling vessels or yachts."

Clause (*f*) as above is merely a re-enactment of the Act of 1886, and throughout the entire Act no ambiguity suggests itself.

The payment of wages in advance "*in any case to any seaman*" is declared unlawful and the section is expressly applicable to foreign vessels as well as vessels of the United States. Notwithstanding this, the learned Judge of the District Court sought to confine its operation to American seamen, whom he defined to be "seamen of any nationality whatever, shipping on board American vessels." His conclusion was based not upon the body of the Act, but upon the title merely.

Is the Act capable of such a construction? It aimed to abolish extortion as practiced by shipping agents, which was facilitated by the payment of advance wages. Every seaman shipping in an American port was subjected to dishonest exaction. Congress becoming sensible of the extent of this evil, and deeming it proper to interfere, passed an Act for the removal of "certain burdens on the American merchant marine." Whether or not these Acts were necessary or benign, forms no part of this inquiry, and we are lim-

ited to their plain intendment. The payment of wages to seamen in advance of the earning of the same, was thought to be injurious and was therefore prohibited. This prohibition extended as well to foreign as domestic vessels, since, in order to be of any protection to seamen, it had, of necessity, to be general, and apply to all vessels trading here. Otherwise, foreign vessels would acquire an advantage in the selection of crews (through the agency of dishonest shipping agents) which would greatly facilitate their shipment, and thus vitiate the very purpose of the Act for extending general relief to the seamen shipping here. One of the purposes of the Act of June 6, 1884, as declared by its title, was to encourage Americans in foreign carrying trade, and in order to give effect to this purpose it would be necessary that they be placed at no disadvantage. Two years later Congress, desiring to emphasize the perfect equality of foreign and domestic vessels shipping here, with painstaking elaboration so declared its purpose.

Under these earlier acts, there was no question as to their applicability to the shipment of all seamen on American soil.

Judge BROWN, in the *State of Maine*, 22 F. R., 734, ruled that this legislation could not be held to include the shipment of crews by American vessels on foreign soil, believing that the Act was intended to apply to foreign and American vessels shipping in American ports. The court there said :

> " The final clause of section 10, which declares that 'this section shall apply as well to foreign vessels as to vessels of the United States' and that in case of violation, a clearance shall be refused them, furnishes a specific indication that Congress did not in this section refer to the shipment of seamen in foreign ports, but had in view acts done in this country alone. For it is manifest that, as against foreign vessels, in foreign ports, not only would this whole section be mere *brutum fulmen*, but the specific provisions, just referred to, would be wholly inapplicable. Its only possible legal application to foreign vessels would be as regards their acts while within the ports of this country. *And as the intent of the*

*section is clear*, to make no discrimination between foreign vessels and domestic vessels, and as the section as to foreign vessels cannot possibly be applied as regards their acts done in foreign ports, it follows that the whole section must be deemed intended to apply to the ports of this country only."

Does the substantial re-enactment of these earlier Acts, under a comprehensive title, limit the scope of its beneficial operation? Since Congress determined that payment of advance wages was detrimental to seamen (which practice had been checked by Congress) it is impossible to assign any sufficient reason for materially limiting the field of operation of this re-enactment since it would create unnecessary and prejudicial confusion. In the absence of some positive provision in the Act to that effect no Court has the right to usurp the prerogative of the legislature and read into the Act such a qualification.

Not one word can be found in the Act or the prior legistion, indicating other than a fixed determination to abolish an alleged abuse in the shipment of seamen on American soil. Reason seemed to dictate such a course and right and justice to require it. The learned court below, however, was of the opinion that the Act could have no application to the libellants " because the statute, as its title declares, is intended to amend the laws relating to American seamen, for the protection of such seamen and to promot ecommerce, and it cannot therefore apply to seamen, even if they are Americans by birth or naturalization, that have regularly shipped upon a British vessel and have thereby become British seamen for the time being. " Such a distinction is too nice a one to be drawn from an Act so wholly free from ambiguity, and such a construction would create an evil, rather than correct one, materially fetter the American carrying trade, lead to mischievous irregularity and confusion of practice beyond the intent of any reasoning legislature, and would outrage all recognized canons of construction.

It is true, the title of the Act does refer to an amendment

of the laws relating to American seamen, but it also includes *the protection of such seamen.* They can only be protected by a general application of the Act to all seamen shipping on our soil, irrespective of the nationality of the vessel. Can this portion of the title be ignored, the body of the Act be thus superseded, and a portion unnecessary for a sensible comprehension be accorded a useless dominance? "*Any seaman in any case*" must refer to seamen shipping under American laws. But even were this not so, clause (F) dispels all doubt as to the legislative intent. The prohibition extending as well to foreign as to domestic vessels places all crews shipping here indiscriminately upon the same footing and precludes a different construction. To hold otherwise would be to totally disregard this Section of the Act and to admit the dominance of one clause in the title. The title is broad enough to comprehend the content of the Act, because the prohibition of the payment of wages in advance is intended "for the protection of such seamen, and to promote commerce;" but even were this not so, the title cannot be resorted to to alter the plain, direct, indubitable provisions of the Act. An intelligent reading of the Act would seem to carry conviction as to its meaning and exclude argument. Since however the learned Judge of the District Court viewed the matter in a different light it becomes the duty of the appellants to treat it thoughtfully. It is, nevertheless, a principle too universally recognized to require extensive citation of authorities, that the title can only be resorted to as a means of construction where an ambiguity exists in the language of the Act, or where a usual construction would lead to absurdity.

Endlich on Interpretation of Statutes, Section 58, says:

> "It has long been established by numerous judicial decisions or *dicta*, from Lord COKE to the present time, that the title of a statute is not a part of the statute, and is to be therefore excluded from consideration in construing the statute. 'The title cannot be resorted to,' says Lord COTTENHAM, 'in construing the enactment.' 'The title, though it has occasionally been referred to as aiding

in the construction of an act, is certainly no part of the law,' it is said by the Court of Exchequer in a well-known and considered judgment, 'and in strictness ought not to be taken into consideration at all.' "

"Section 59 says: 'But unless the Constitution imperatively prescribes a different relation between the title and the body of the act, the rule remains that the former may be consulted in aid of the interpretation of the latter only in cases of ambiguity and uncertainty in its provisions, in aid, if need be, of their construction. It can never control the plain and unambiguous meaning of the language of the statute nor be used to extend or restrain its positive provisions; so that, even in the interpretation of a penal law, if the words of the enacting clause are broader than the title the former must govern.' "

Chief Justice MARSHALL said, in *United States* v. *Fisher*, 2 Cr., 358, 386:

"Neither party contends that the title of an act can control plain words in the body of the statute, and neither denies that, taken with other parts, it may assist in removing ambiguities. Where the intent is plain nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice and will have its due share of consideration."

The District Court below seems to have reversed this principle in adhering to the belief that the title of the Act not only defines its limitations, but is paramount to it, in saying, "It (the Act) cannot therefore apply to seamen, even if they are Americans by birth or naturalization; they have regularly shipped upon a British vessel, and have thereby become British seamen for the time being." The Court based its opinion on a misconception of the decision of this Court *in re* Ross, 140 U. S., 453, hereafter considered.

The construction of this section of the Act has been presented to at least two other district courts and by them fully considered.

In *Chambers* v. *Kestor*, 110 F. R., 432, Judge BRADFORD, in a careful and exhaustive opinion, holds that the Ac- applies to British subjects shipping upon a British vessel in an American port.

In "*The Troop*," 117 F. R., 557, Judge HANFORD adopted a similar construction of the Act. Both of these decisions discuss the case at bar, but decline to adopt the conclusion of the lower court and its interpretation of the Act.

In the latter case the Court vigorously contended against any restrictive construction or operation of the Act, as being contrary to the plain intendment of Congress and our moral standard of public policy, and said :

> "In the case of the *Eudora* (D. C.), 110 Fed. Rep., 430, the Court, by a curious process of reasoning, first emasculated the title of the statute, so as to limit its application to contracts of American seamen, then gave paramount and controlling effect to the title as thus curtailed, so as to annul the provisions of the twenty-fourth section, making it applicable to foreign ships, and then proceeded to change the nationality of American citizens by giving effect to the principle that seamen on board of merchant vessels take the nationality of whatever ship they may for the time being be engaged to serve, and this in a case in which the contract by which they became attached to the ship was a violation of a law of the country in which it was made. I am utterly unable to concur in a conclusion based upon such premises and the reasons assigned, and I deny that an American citizen can be deprived of the protection of the laws of his country, as if he had expatriated himself by signing an agreement which the policy of our government requires the courts to treat as a nullity."

In view of the reasonable and natural conception of the well defined purpose of the Act and the interpretation placed upon it by the judiciary—stimulated by the decision of the District Court below to an adverse view—it is manifest that Congress intended the Act to control the shipment of crews in American ports, irrespective of the flag of the vessel. There remains for consideration the second question.

## II.

Has Congress legislative power to act? If so, the second question certified to this court must be answered in the affirmative, and "under the agreed statement of facts above set forth, upon a libel filed by said seamen after the completion of the voyage, against the British vessel, to recover wages which were not due them under the terms of their contract or under the law of Great Britain," the libellants are entitled to a decree against the vessel.

The learned Judge of the District Court held as a further reason for denying recovery, that Congress, in legislating upon the manner of hiring and discharging seamen by foreign vessels, has encroached upon the internal management of such vessels, to which extent it declared the act inoperative, and in so doing relied solely upon *in re Ross*, 140 U. S., 453. It is difficult to find any support in that case for the contentions of the appellee, viz.: that an American seaman shipping on a foreign vessel in one of our ports loses his citizenship to such an extent as to forfeit his right to the protection of our laws controlling such shipment; and that a foreign vessel may seek an American port for commerce, and while there ship a crew in violation of the law of the port.

In the *Ross* case a British seaman, then on board and in the service of an American vessel, killed the second officer thereof, while the vessel was lying in the port of Yokohama. He was tried and convicted of murder by the Consul General of the United States, pursuant to a treaty with Japan. Ross claimed that since he was a British subject the court had no jurisdiction. There is no question that but for this treaty he would have been tried in the Japanese tribunals and under Japanese laws. Congress recognized this right, conferred by international law, and desiring to avoid the partiality of such an unfriendly tribunal, entered into a treaty for the trial of "Americans committing offenses against Japanese," and

"Americans committing offenses in Japan." The court said (page 463),

> "After the rise of Islamism, and the spread of its followers, over Eastern Asia and other countries bordering on the Mediterranean, the exercise of this judicial authority became a matter of great concern. The intense hostility of the people of Moslem faith to all other sects, and particularly to Christians, affected all their intercourse, and all proceedings had in their tribunals. Even the rules of evidence adopted by them placed those of different faith on unequal grounds in any controversy with them. For this cause, and by reason of the barbarous and cruel punishments inflicted in those countries, and the frequent use of torture to enforce confession from parties accused, it was a matter of deep interest to Christian governments to withdraw the trial of their subjects, when charged with the commission of a public offense, from the arbitrary and despotic action of the local officials. Treaties conferring such jurisdiction upon these consuls were essential to the peaceful residence of Christians within those countries and the successful prosecution of commerce with their people."

Thus by the effect of this beneficent treaty, the jurisdiction of the local government was transferred to the Consul General of the United States. It was claimed in behalf of Ross that the Consular Court could not take jurisdiction of the offense since it was committed on board a vessel of the United States in Japanese waters, and that the petitioner being a subject of Great Britain was entitled to invoke the British laws. In other words, the defendant desired to seek the protection of the United States treaty, alleging service under the American flag, and thus escape the local tribunals, while at the same time he sought to deny the jurisdiction of the Consular Court (which derived its existence from that treaty) and the American law which it applied. This court sustained the jurisdiction of the Consular Court, and in so doing, gave utterance to that principle of law, so thoroughly misunderstood by the court below, to the effect, that when a foreigner enters the mercantile marine of a nation and becomes one of a crew

of a merchant vessel bearing its flag, he assumes a temporary allegiance to that flag; and in return for this protection, becomes subject to the laws by which that nation governs its vessels and seamen. In declaring this principle, however, the Court said: "The law which he violated was the law made by the United States for the government of United States vessels; the person murdered was one of his own superior officers whom he had bound himself to respect and obey, and it is difficult to see by what authority the British government can assume the duty or claim the right to vindicate that law or protect that officer" (page 473).

In the case at bar the facts are so widely different as to almost preclude argument. In the interest of public policy our government has seen fit to forbid the payment of advance wages to any seaman whether shipping upon foreign or domestic vessels. The British vessel "*Eudora*" sailed into one of our ports and in defiance of this law shipped a crew (some of whom were American citizens) for a voyage local in its character, paid the wages in advance, and upon the termination of the voyage in an American port, discharged them. The vessel when brought before our courts for the violation of this law, relying on the *Ross* case, endeavored to find comfort in the defense that such seamen, so shipping, became for the time being subjects of Great Britain, and that our government through comity would be obliged to tolerate this infraction of the law, since the English law sanctioned such shipments. In reply, it cannot be too strongly presented to this Court that a foreign law is never adopted by comity when contrary to the public policy of the country of the forum and prejudicial to its citizens; nor can foreign vessels be suffered to subvert our own law on the ground of comity. Furthermore, there is not one word to be found in the *Ross* case in support of any such false doctrine.

Judge BRADFORD, after a careful examination of this case, said (*Chambers v. Kestor*, 110 F. R., 432-446):

"I can discover nothing in the above quotation or

in any other part of the opinion countenancing the idea that it was beyond the power of Congress to prohibit, under a penalty, the prepayment on American soil or in American ports of the wages of seamen shipping in such ports on foreign vessels. Certainly, if such prohibition were beyond the legislative authority in the case of foreign seamen, it would be equally so in the case of American seamen, for under the doctrine of temporary allegiance, so clearly enunciated by the Supreme Court, the same argument would apply with equal force to both cases."

The doctrine of temporary allegiance to the "law of the flag" seems to have been thoroughly misunderstood by the Judge of the District Court, who utterly disregarded its origin and purpose and confused its relation to contracts and torts. Like every other branch of admiralty law, this doctrine was the outgrowth of necessity.

In a certain sense a vessel must be regarded as part of the territory of her country, and a person entering her employ does so with notice of her nationality and accepts the privileges with the responsibilities. If this contract of hiring is entered into pursuant to the "law of the flag," that law would generally be respected and applied through treaty or comity irrespective of the forum; but the moment rights beyond the mutual relations of the ship are infringed, the law of the forum is enforced. Thus, where a captain shipped in Italy under the Italian flag, upon distribution of proceeds of sale of the vessel sold here, it was held that his lien for wages given by the Italian law would be respected—but postponed to liens arising under the law of the forum. "*The Olga*," 32 F. R. 329. The Court said:

"As respects the liens arising upon the contracts made by the master within this jurisdiction and the proprieties of such liens in respect to all the claims on the ship, our own law, as the law of the place of the contract, as well as of the forum, should, I think, prevail."

The same Judge again clearly defined the limitation of the "law of the flag" in the "Scotia," 35 F. R., 907 in holding that supply men who furnished necessaries to a British vessel, in an American port on the master's orders, and on the credit of the vessel, have a maritime lien therefor, notwithstanding the English law and the general maritime law to the contrary. Judge BROWN there said:

> "Foreign ships like foreign citizens while dealing in another country with its citizens owe it a temporary allegiance; and as respects such contracts, they are subject to the law of that jurisdiction and to all the securities and remedies that the *lex loci* gives." (Citing numerous authorities.)

In "*The Brantford City*," 29 F. R., 373, it was held that

> "The 'law of the flag,' so called, expresses no principle of construction. So far as it differs from the general maritime law it is but the mere municipal law of the ship's home and has no authority abroad except by comity and will not be adopted in a different forum when against the policy or prejudicial to the citizens of the country of the forum."

It follows from these and numerous other decisions that in matters of contract the doctrine of the "law of the flag" has no application where the interests extend beyond the internal or municipal affairs of the vessel.

That the "law of the flag" would apply where a foreign crew is shipped in a foreign land on a foreign vessel has rarely been questioned. "*The Wexford*," 3 F. R. 577; "*The Adolph*," 7 F. R. 501; "*The Angela Maria*," 35 F. R. 430. But the question has frequently arisen as to the treatment of seamen on foreign vessels who have shipped in American ports, where treaties confer exclusive jurisdiction on the consuls. In those cases, our courts have invariably refused to entertain jurisdiction where the ends of justice fail to require it. The moment, however, the conduct of the officers

of the vessel amounts to a discharge of such seamen, or the cruelty is of such a character as to demand interference, such treaties have been to that extent suspended. "*The Burchard*," 42 F. R. 608; "*The Welhaven*," 55 F. R. 80; "*The Marie*," 49 F. R. 286.

Mr. Justice BRADLEY in "*The Belgenland*," 114 U. S. 355-363, discussing this phase of the matter said:

> "The consent of their consul or minister is frequently required before the court will proceed to entertain jurisdiction; not on the ground that it has not jurisdiction, but that, from motives of convenience or international comity, it will use its discretion whether to exercise jurisdiction or not; and where the voyage is ended or the seamen have been dismissed or treated with great cruelty, it will entertain jurisdiction even against the protest of the consul."

In "*The Salomoni*," 29 F. R. 534, it was held that where the master of an Italian vessel in one of the ports of the United States was guilty of a barbarous and malicious assault upon a seaman on said vessel, he is not protected by the terms of the consular compact conferring exclusive jurisdiction, and the district court may in its discretion take jurisdiction of the case for the protection of the seaman and the redress of his wrongs. To the same effect is the case of *Bolden* v. *Jansen*, 70 F. R. 505:

If the Court will extend relief in spite of a treaty conferring exclusive consular jurisdiction when conditions are necessitous, *a fortiori* will it be willing to exercise jurisdiction in the absence of such a treaty. In "*The Napoleon*," Fed. Cas. 10,015 the libellant, an American citizen, sued for wages earned on the British brig "*Napoleon*," on a voyage from New York to Jamaica and back. Exceptions were taken to the jurisdiction of the Court, since the vessel was a British bottom. Judge BETTS in passing on the matter said:

> "The exception taken to the jurisdiction of the Court because of the foreign character of the vessel and her master cannot prevail. It has not been proved that the libellant is an alien; and were it so, the law affords no

exemption of foreigners in their vessels from the jurisdiction of this Court. Nor if both parties were aliens would that fact affect the power of the court; it has cognizance of the subject matter, although, as a general usage, it forbears exercising its jurisdiction over controversies between foreign seamen and ship masters. But it is no way probable it would withhold it in such case when the suit is for wages by a seaman who had completed his contract and voyage and was discharged from his vessel. Nor would its jurisdiction be denied in case that voyage was broken up in an American port, leaving the crew in a necessitous condition with outstanding wages due them."

In *Patch* v. *Marshall*, Fed.Cas. 10,793, a still stronger case is presented. An American citizen shipped in Boston on the British brig "*Hope*" for a voyage to Cuba and return to a port of the United States. The voyage was accordingly made and the libellant duly discharged in Baltimore on the return of the vessel. While in Cuba, he was improperly imprisoned by the master and upon an action *in personam* against him obtained a decree. Upon appeal by the master in the Circuit Court the British Consul filed a protest against the jurisdiction of the Court because (1) The brig "*Hope*" was a British vessel and the respondent, her commander, a British subject; (2) an investigation of some of the alleged causes of damages must call in question official acts and conduct of a British functionary in regard to British subjects for which he is responsible only to his own government. Circuit Justice CURTIS said:

"But it does not follow that the conduct of the master of such a vessel, in procuring the official intervention of the consul, upon false allegations, to the injury of an American citizen by imprisonment in a foreign jail, is not to be here investigated. That depends on other considerations and is not distinguishable from any other wrong done by the master of which this Court should take or refuse jurisdiction according to the national character and domicil of the parties and the place of termination of the voyage."

It is true a vessel carries with it a certain exemption from local laws while in foreign ports, owing to political conditions commonly known as comity. In the interests of commerce generally, by common understanding, a vessel, while in a foreign port, is permitted to regulate those matters which pertain to its internal affairs and this privilege is co-extensive with the mutual relations of the ship. This must be recognized, however, as a matter of grace and not of right. By constitutional right Congress has exclusive power to regulate commerce, and in so doing may dictate a course of procedure in promotion of the moral health of the nation, to be recognized and respected by all vessels trading here. Whether or not the policy of the country was wise or discreet in the regulations claimed by the appellee to be rigid, is not a matter for judicial inquiry. It is enough that Congress has supreme power, and that, in the discharge of its duty, it has so declared its purpose. By what authority can the judicial branch of our government declare such regulations unlawful? Even assuming, for the sake of argument, that such regulations contravene the comity of nations, recognized by the general maritime law of Christian countries, surely the judiciary could not interfere. At most, it could but be declared an indiscretion on the part of the Legislature, in a matter in which it was supreme. It is to be borne in mind that the framers of the Constitution reposed in Congress a confidence as to its wisdom in such matters, and any hoped-for redress of the aggrieved must be sought in subsequent legislation.

Wharton, on "International Law," says:

> Sec. 33. "In the letter of Mr. Webster to Lord Ashburton of the 1st (8th) of August, 1842, the principles of the law of nations which apply to the subject were discussed with great clearness and ability. To that letter I refer you. It will be perceived that Mr. Webster does not propose the introduction of any new principle into the law of nations. He contends that 'a vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation

to which she belongs and subjected exclusively to the jurisdiction of that nation; and consequently if those who have charge of her endeavor in good faith to keep her at sea, that is, within that exclusive jurisdiction, and if contrary to their will she be forced within another jurisdiction by stress of weather, by violence or other necessity, she does not cease to be within the jurisdiction of her own country. In this case, however, such jurisdiction is not *exclusive* to all purposes! For any unlawful acts done by her *while thus lying in port and for all contracts entered into while there by her master and owners she and they must doubtless be answerable to the laws of the place.*'"

"Mr. Webster further contends that 'by the comity of the law of nations, and the practice of modern times, merchant vessels entering open ports of other nations for the purpose of trade are presumed to be allowed to bring with them and to retain for their protection and government, the jurisdiction and laws of their own country. *These, of course, extend over both persons and things, subject always to the laws of the place, in cases of crimes, contracts, etc., as above mentioned.*'"

"The right here claimed is not in derogation of the sovereignty of the place where the vessel may be, but is presumed to be allowed by that sovereignty."

This letter has been cited with approval by the Supreme Court *in re Ross* (*supra*).

It has been suggested that a line of decisions applying the "law of the flag" to the construction of the contract of hiring forms an exception. A more thoughtful consideration of these cases will show quite the contrary. In all of these decisions the law of the home port of the vessel was applied only when the contract was made or executed there. In other words, the law of the place where the contract was made or executed, was applied in construing it. The case of "*The Catherine*," 1 Peter, 104, is typical. It has even been held that the "law of the flag" applies where the seamen ship in American ports on foreign vessels for a voyage terminating in the land of the flag. "*The Pendergast*," 29 F. R., 127; "*The Brantford City*," 29 F. R., 373; "*The Olga*,"

32 F. R., 329. Where, however, the voyage is local in its character or terminates in an American port our courts have jurisdiction, and the "law of the flag" is ignored, for, by every principle of the law of contracts, it must be construed according to the law of the place where it is executed. Orr *v.* Achsah, Fed. Cas., 10,586; "*Lilian M. Vigus*," Fed. Cas., 8346. But by comity the "law of the flag" will be recognized, if, upon completion of the contract, that law only can be invoked by either party thereto. Where, however, pursuant to the agreement, or by breach of it through cruelty or otherwise, the voyage is ended here, our law, as the law of the place of execution, is applied; and this is so, even where the contract of hiring provides otherwise. If the master so shipping a crew on a voyage to this country and return, is guilty of a breach of contract, it is avoided *in toto*, and the "law of the flag" cannot prevail. The master cannot take advantage of the contract which he, himself, has broken: *Buecher* v. *Klorkgeter*, Fed. Case 2083; *Hayes* v. *Barque Wickwire*, 7 Phila. Rep. (Pa.), 594.

It is to be borne in mind that the voyage in question was from Portland, Maine, to Rio and back to an American port of discharge. In accordance with both common and maritime law such an agreement must be construed by the American law. If, therefore, our law applies in the construction of the contract, no argument is necessary in declaring that it must be respected in the making of such contracts.

A foreign vessel, which is by comity suffered to seek trade here and compete with our vessels only so long as it conforms to the laws which obtain for the regulation of commerce, may not on our soil ship a crew and deny it the protection afforded by Congress, solely because such seamen owe a certain temporary allegiance to a foreign flag as to matters of mutual concern. Even if this allegiance were of a more substantial character, it is to be remembered that the offence is committed before such seamen become members of the crew and before they owe any allegiance to

another flag. The very contract that binds them contravenes our laws.

> On this point it was said, in "*The Troop*," 117 F. R., 557, "The supposed lack of (legislative) power is not to be found in any clause of the Constitution limiting or prohibiting the exercise of power by Congress, nor on the broadest extension of the rule that statutes have no extra territorial force. Contracts for hiring sailors are subject to the general rule that the law of the place governs in the determination of all questions affecting the valid execution of contracts, and the place where such contracts are made is not on board the ship, but on the land. Sailors, whether citizens or aliens, until they become bound by the execution of a valid contract for service, are entitled to be protected by the laws of the land to the same extent as other persons."

It follows, therefore, that by virtue of the law of contracts, which prevails generally, the appellee has brought himself within the inhibition of the Act. The contract was made and executed here and must be subject to the prevailing laws. The moral side is not less strong.

The local laws must be respected in such matters, especially where by legislative enactment, abuses in practice have been corrected for the creation of more healthful environments for seamen generally and the promotion of commercial interests. If foreign vessels recognizing these laws seek our trade no reason can be assigned, either technically or ethically, in support of an infraction.

It is therefore in accordance with both authority and reason that a vessel while in a foreign port is subject to local laws in matters pertaining to contracts there effected. It has been a matter of regret frequently expressed in judicial decisions that Congress should fail to recognize the importance of establishing uniform shipping laws applicable alike to both foreign and domestic vessels and it is believed that these judicial utterances finally resulted in a much needed reform established by this act.

The first of these decisions arose under the Act of July 20, 1790, 1st Stat. 133, which was entitled "An act for the government and regulation of seamen in the merchant service." Section 4 provided that "if any person shall harbor or secrete any seaman or mariner belonging to any ship or vessel, knowing them to belong thereto, upon conviction he shall forfeit and pay a fine of ten dollars."

Under this law a Portuguese seaman was arrested for desertion from a Portuguese vessel while in the port of Boston. Judge STORY, in determining the matter (in *ex parte D'Olivera*, 1 Gallison 474) held that the act did not apply to foreign seaman on board foreign vessels, and said :

> "We are of opinion that the act for the regulation of seamen exclusively applies to seamen engaged in the merchant service of the United States. It may be a serious inconvenience that Congress has not extended the provisions to cases of foreign seamen in foreign vessels in compliance with that comity which it is understood many foreign nations exercised in favor of this country. Whatever may be the evil we can only regret it ; it is for another tribunal to apply the remedy."

This decision is of the greatest importance not only because of the author's eminence, but also because of the comprehensive scope of the Act. The Act, as its title suggests, established a uniform rule for the government and regulation of seamen. It required masters to ship the crew by written agreement declaring the voyage, term of time, and rate of wages. It provided a forfeit for a seaman's failure to present himself on board, or for absenting himself without leave, and fixed the penalty for desertion, and provided for a survey of an alleged unseaworthy vessel—also for the payment of one-third of a seaman's wages in every port, and for final payment, and it further provided a method for the recovery of wages and for an allowance of food.

This was the general scope of the Act which Justice STORY held Congress might enforce against foreign vessels, "in

compliance with that comity which, it is understood, many foreign nations exercised in favor of this country."

This view of the law has been frequently cited with approval, and a consideration of the decisions both in this country and in England show that no court has ever doubted the legislative power to protect the shipment and discharge of seamen within its territory. These decisions merely seek the legislative intent as expressed, and do not enforce the beneficial protection of the act against foreign vessels solely because of its limitation.

In *United States* v. *Kellum*, 7 F. R., 843, a criminal action was brought against defendant for receiving compensation from a seaman for securing him employment on a vessel. The title to the act which was claimed to have been violated was "The appointment of shipping commissioners * * * to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen." The section provides:

> "If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as a seaman, or from any person on his behalf any remuneration whatever other than the fees hereby authorized for providing him with employment, he shall for every such offense be liable to a penalty of not more than one hundred dollars."

Judge WALLACE, in determining the case, said:

> "The title of the act * * * affords some evidence of the legislative intent; the several sections of the act, which throughout are consistent with the title, contemplate a surveillance by American officials of American vessels; and the definition in Section 65 for the purposes of the act, of a seaman as a person employed or engaged to serve in any capacity 'upon any ship belonging to any citizen of the United States'—all concur to demonstrate the scheme and scope of the act as designed to secure the protection of seamen in American ships throughout the hiring, service and discharge of such seamen."

In *United States* v. *McArdle* 2 Sawyer, 367, the Court said:

> "The subject of the protection of seamen is provided for in what may be called a chapter of the act entitled 'Protection of Seamen.' * * * They relate to the attachment and assignment of seamen's wages and the unlawful boarding of vessels and soliciting seamen to go on shore. From the terms used and the nature of things their operation is confined to ports and waters of the United States, and all their provisions are alike applicable to any seaman in an American port, without reference to the nationality of the vessel on which he is engaged, and there can be no doubt but that the best public policy of a commercial people, and the comity of civilized nations, demand that this should be so."

Judge BENEDICT, in *United States* v. *Anderson*, 10 Blatchford, 226, with reference to Section 62 of this act said:

> "Considering the general language of Section 62, and in view of the evil sought to be remedied thereby, and of the nature of the prohibition therein contained, the section is to be considered as intended to protect foreign vessels as well as vessels of the United States, and the fact that the vessel boarded by the prisoner was a foreign vessel is therefore of no avail as a defence in a prosecution under this section."

The English courts are in harmony with these decisions in looking solely to the intent of the act, without questioning the right of Parliament in the premises.

BLACKBURN, *J.*, in *Leary* v. *Lloyd*, 3 El. & El., 178, in considering the Merchant's Shipping Act, said:

> "After a careful consideration of the act, we are of opinion that the sections coming under the head of 'discipline' of which the section in question is one, have reference to the British ships alone."

The Customs Consolidated Act, of 1876, went further

and provided that all vessels engaging in the English coastwise trade should be equipped as to stores for the use of crew and in all other respects be governed by the same laws, rules and regulations to which British ships when so employed are now subject. *Kay on Law of Master and Seaman* § 769.

The inadequacy of legislative protection to foreign seamen in our ports was again called to public attention by the Circuit Court of Appeals for the Ninth Circuit in *Grant* v. *The United States*, 58 F. R., 694. The Court there said :

> "Notwithstanding the fact that public attention was, by the opinions above quoted from, called to the omission to extend these laws to foreign vessels and seamen, it has failed to change them in this respect, either in the revision or subsequent amendments. From this we think that acquiescence on the part of the legislative branch of the Government in the interpretations given by Story and Williams may be fairly inferred. Judge DEADY gives excellent reasons for the making of suitable laws for the protection of foreign seamen and vessels in our ports, and the case at bar illustrates the vicious practices to which he alludes. * * * But the evil of permitting such offences to go unpunished is not greater than the demoralizing effect of a decision which adds to or takes from the law. If the laws which we have are found to be insufficient when fairly interpreted, Congress should be called upon to amplify them."

Pointing out with unwavering unanimity the general protection to be extended to all seamen, and seeking only the real intent as expressed by legislation, these cases accept without question the power of Congress to regulate shipment and discharge, notwithstanding a recognition by them of the existence of corrupt practices, the correction of which they suggest. Now that Congress, presumably in response to these suggestions, has enacted uniform shipping laws, expressly applicable to foreign as well as domestic vessels, reforming the practice, it would be graceless indeed for any court to deny the legislative right. We are not, however,

driven to analogies or ethics in support of the Act, for it has been judicially passed upon.

Three decisions are worthy of special note; *Chambers* v. *Kestor*, 110 F. R. 432; "*The Troop*" 117 F. R. 557 and "*The Brantford*," 29 F. R. 394. In the first case Judge BRADFORD, of the District of Delaware, in a similar case, wrote a learned and exhaustive opinion applying the Act in favor of foreign seamen shipping on a foreign vessel in an American port. He discussed the decision of the District Court below in the case at bar and for well assigned reasons came to a different conclusion, being utterly unable to agree either that Congress did not intend the regulation of seamen shipping in our ports on foreign vessels or that it enjoyed no such power. In "*The Troop*," Judge HANFORD, also in a similar case, discussed both of these decisions and joined with Judge BRADFORD in sustaining the Act.

The "Brantford" is analogous. Judge BROWN there passed upon the validity of a bill of lading exempting the carrier from negligence, contrary to our law, but permissible by the "law of the flag." The cargo was shipped in Boston on a British vessel to a British port. It was held that since the contract was in contravention of the public policy of the country, it was for that reason illegal and void. In considering the question of comity the court declared that nothing could be more unequal or prejudicial to our own citizens or more suicidal in national policy than to tolerate in foreign ships the infraction of laws prescribed for the public welfare, with respect to contracts made in our ports. The court said:

> "Besides the above general considerations, a special reason why the foreign law could not, in any event, be adopted in this case, is found in the repeated adjudications of the Supreme Court that such stipulations are against the public policy of the country, and are on that ground illegal and void. Contracts, though designed to be performed elsewhere, are void, if criminal or illegal where made; *i. e.*, if the very promise or condition,

which is the consideration of the contract, as distinguished from the thing to be done by the other party, be illegal where made—the only exceptions being cases arising under the laws against usury; and a foreign law is never adopted by comity where it would be against the public policy of the country of the forum, and prejudicial to its citizens. Story, Confl. Laws, ss. 243, 244, 324; Westl. Priv. Int. Law, ss. 203, 204; Miller *v.* Tiffany, 1 Wall., 298, 310; Blackwell *v.* Weber, 23 Blatchf., 537; Hyde *v.* Goodnow, 3 N. Y., 269.

Nothing could be more unequal or prejudicial to our own citizens, or more suicidal in national policy, than to uphold, in favor of foreign ships, stipulations as respects carriage here or upon the high seas, which, when made by our own carriers, we declare to be against public policy, extortionate, and void. As respects such stipulations, foreign ships cannot stand on any different footing from our own, nor can a foreign law be suffered to subvert our own law to the prejudice of our own ships. No comity demands that. Whatever force, therefore, the law of the flag might ordinarily have abroad, it cannot override, in a foreign forum, these fundamental principles of international law. This plainly appears, also, from the same author above quoted, who makes the largest claim for the law of the flag, and who elsewhere says:

"Wide as the operation necessarily is which is given to the intention of the parties to a contract, it is plain that it can have no effect upon the question of the legality or illegality of the thing contracted for. No law can permit itself to be evaded, nor can it, consistently with the principles of international jurisprudence, sanction the evasion of a foreign law. Thus, if the thing contracted to be done is illegal by the law of the place of the intended performance, the contract should be held void, wherever it was actually entered into, by all courts alike. Where, however, it is the contract itself—the exchange of a certain consideration, either for any or for a certain promise—that one of the competing laws claims to forbid the question assumes a different form. In such a case it would seem that the legality of the agreement must be decided by the law of the place where it is made." Foote, Priv. Int. Law, 287, 288.

It is respectfully urged that the questions certified to this court for the proper decision of the cause be answered in the affirmative, in conformity with our national policy and the decisions heretofore rendered.

Respectfully submitted,

JOSEPH HILL BRINTON,
*Proctor for Appellant.*

1201 Chestnut Street,
Philadelphia. Penna.

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No. 278.

October Term, 1902.

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IN THE

# Supreme Court of the United States.

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B. M. PATTERSON, EDWARD JANSEN, SVEN FREEMAN, E. THOMPSON, SIMON ANDERSON and KARL STEVENSON, Seamen,

*Libellants-Appellants,*

*v.*

The British Bark "EUDORA," Whereof ALFRED E. DICKSON is Claimant

*Appellee.*

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Certified from the United States Court of Appeals, for the Third Circuit.

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# Brief of Dickson, Claimant of Bark "Eudora," Appellee.

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HORACE L. CHEYNEY,
JOHN F. LEWIS,
*Counsel for Appellee.*

709 Ingersoll Building,
Philadelphia

30300

IN THE

# Supreme Court of the United States.

PATTERSON, *et al.*,
*Libellants-Appellants*

*v.*

THE BRITISH BARK "EUDORA," whereof ALFRED E. DICKSON is claimant,
*Appellee.*

**CERTIFIED FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.**

## BRIEF ON BEHALF OF APPELLEE.

### STATEMENT OF FACTS.

This case raises the question of the validity of the provision of the Act of Congress of December 21, 1898, forbidding the payment of wages, in advance, to a seaman shipping on board a foreign vessel at a port of the United States.

The libellants, one or more of whom are American citizens, shipped on board the British bark "Eudora," at New York, for a voyage to Turks Island and thence to either an American or Canadian port.

It was the duty of the master of the vessel, under the British law, to have the seaman sign a

contract of the form prescribed by the Merchants' Shipping Act of Great Britain, and the shipping articles signed by the seamen at New York, in the presence of the British Consul, and with his sanction, were of the form required by that law.

By that contract the libellants submitted themselves to the operation of the British law, so far as their rights as seamen were concerned, and they were entitled to all the benefits conferred upon seamen by it and were subject to all the obligations imposed by it.

At the time the libellants shipped on the "Eudora," they were indebted to a shipping agent for board and for goods furnished to them by him and by their direction, and with their consent, the amount of that indebtedness was paid by the master of the bark to the shipping agent and the shipping contract was drawn so as to cause the sum advanced by the master to be deducted from their wages to be subsequently earned. This contract was lawful under the British law, and there is no question but that the libellants were properly indebted to the shipping agent for board and the goods sold to them, and there is no claim that any advantage whatever was taken of them.

At the conclusion of the voyage in Philadelphia, the libellants were not entitled to any wages, under the British law or under the contract signed by them, as they had already been paid in full for the services rendered. Notwithstanding this fact, they brought suit against the vessel, claiming to be paid again for their services, on the ground that under the American law the contract into which they had entered was unlawful.

The libellants filed a libel *in rem* in the District Court of the United States for the Eastern District of Pennsylvania, and after formal hearing upon an agreed state of facts, a decree was entered by the Honorable John B. McPherson, Judge of that court, dismissing the libel.

The libellants then appealed to the United States Circuit Court of Appeals for the Third Circuit, and after hearing before that court the cause was certified to this court for decision.

## ARGUMENT.

The act of Congress of December 21, 1898, 30 Stat. L. 755, the construction and validity of which are to be determined upon this appeal, is entitled "*An Act to amend the laws relating to American seamen, for the protection of such seamen and to promote commerce.*"

The material sections in question are as follows:

"Sec. 24. That section ten of chapter one hundred and twenty-one of the laws of eighteen hundred and eighty-four, as amended by section three of chapter four hundred and twenty-one of the laws of eighteen hundred and eighty-six, be, and is hereby, amended to read as follows:

Sec. 10. (*a*) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages to any other person.

Any person paying such advance wages shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months, at the discretion of the court.

The payment of such advance wages shall in no case, excepting as herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages.

If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be liable to a penalty of not more than one hundred dollars."

The act then further provides, clause (*f*):

> "That this section shall apply as well to foreign vessels as to vessels of the United States; and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation;
>
> Provided, That treaties in force between the United States and foreign nations do not conflict."

---

The act of June 26, 1884, 23 Stat. L. 53, which the above act amends, is entitled "*An Act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes.*"

That act prohibits the payment of wages in advance, either by American or foreign vessels, although by its title it refers to American vessels alone.

It provided that the prohibition against the payment of wages in advance, should not apply to whaling vessels.

The first attempt on the part of Congress to govern the shipping contracts between a foreign vessel and the seamen shipping upon it, at an American port, is to be found in the act of June 19, 1886, 24 Stat. L. 79.

Section 3 of that act amended the act of June 26, 1884, by providing that any master, owner or consignee or agent of any foreign vessel who had violated the provisions of the act of 1884 should be liable to the same penalty as the master, owner or agent of a vessel of the United States would be for si milar violation.

An inspection of the titles of these various acts shows that they were intended to apply to American vessels only ; that is, vessels registered or enrolled under the laws of this country.

Section 4612 of the Revised Statutes provides that the word "seamen," as used in the statutes, means seamen upon vessels owned by the American citizens.

It is a well established rule of law, affirmed by this court *In re Ross, Petitioner*, 140 U. S. 453 and in England in the *Nina*, 2 L. R. P. C. 39, that a seaman, whatever his nationality may be, by enlisting upon a foreign vessel, by that act, becomes a seaman of the nationality of the foreign vessel. Consequently those of the libellants, who were American citizens, by enlistment upon the "Eudora," became British seamen.

If these principles be borne in mind, it becomes evident that the act of 1898, in so far as it attempts to regulate the contracts of shipment with seamen upon foreign vessels, is inartificially prepared. That provision is a mere excrescence upon legislation, intended by its title to apply to American vessels only, and it becomes difficult, therefore, to ascertain the true legislative intent, that is, whether Congress intended that the act should apply only to seamen of American citizenship shipping upon foreign vessels, or, whether it intended to govern the contract entered into between every vessel at an American port, with every seaman, without reference to his citizenship or nationality. If the former was the legislative intention then the act of Congress is meaningless, because there is nothing upon which it can take effect, there being, under the well

recognized principles of international law, no American seamen upon British vessels.

If Congress intended to go further, however, and to regulate the contract of every seaman, without respect to his nationality, made at an American port with a foreign vessel, then the clause is invalid because Congress lacks such power.

Passing, therefore, the mere construction of the text of the act, we arrive at the broader question involved in the case, that is, whether Congress possesses the power to regulate by legislation a contract entered into at an American port by seamen for service upon a foreign vessel.

It is submitted that Congress possesses no such power, and that clause f of Section 10 of the Act of 1898 is invalid for the following reasons:

1. *It is a well recognized principle of international law that a vessel is a detached portion of the territory of the country whose flag it flies, and, therefore, a contract entered into by seamen at an American port for service upon a British vessel is to be performed upon British territory, and its validity and all other questions of internal management of the vessel must be determined by British law, and Congress has no power to regulate the validity of contracts to be performed without the territory of the United States, even if signed upon American soil or the other internal affairs of the vessel.*

2. *The attempt to regulate seamens' contract made at an American port with a foreign vessel is invalid because Congress lacks power of legislation over contracts of foreign vessels, made at American ports, other than conferred by the commerce clause of the Constitution, and a contract of seamen for service upon a*

*foreign vessel is not commerce, within the meaning of that clause.*

3. *The clause is invalid, because the prohibition of a contract for the payment of wages to a seaman in advance is an infringement of the liberty to enter into a contract guaranteed by the Fifth Amendment to the Constitution.*

4. *The provision of the Act of 1898, that the ship master who pays a seaman's wages in advance shall be compelled to pay the seaman twice for the same service, is repugnant to the constitutional provision that property shall not be taken without due process of law.*

## I.

**The bark "Eudora," being a British vessel, was a detached portion of the territory of Great Britain, while lying in the port of New York, and all questions of internal management of the vessel are to be determined by the British law, and the act of 1898 being an attempt to regulate the internal affairs of the bark, is invalid.**

In modern times many of the disputed principles of international law have become settled. Amongst the principles so settled are those that a merchant vessel is a detached portion of the territory of the country whose flag it flies; that even while in the ports of another country, all matters of its internal management are to be governed by the law of the country whose flag it flies and that it submits itself only to the jurisdiction of the foreign power in so far as matters of public peace and tranquillity are concerned. It is a corollary deduced from these principles that a seaman, no matter what his nationality may be, by shipment upon a vessel becomes a sea-

man of the nationality of that vessel, and his rights and obligations are to be determined by the law of the country whose flag that vessel flies.

The principle that the "Eudora" was a detached portion of British territory is no longer disputed. The *Scotia*, 14 Wall. 170; *Dana's Wheaton's Int. Law*, sec. 106; 1 *Kent's Com.* 26, *The Lamington*, 87 Fed. 754.

The modern law upon this general subject is very clearly stated by Mr. Chief Justice WAITE in *Wildenhus' Case*, 120 U. S. 1. at 12:

> "From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged, as the laws of that nation or the interests of its commerce should require."

In *U. S.* v. *Rogers*, 150 U. S., 249, at page 264, Mr. Justice FIELD in delivering the opinion of the court, quotes with approval the language of Mr. Webster, while Secretary of State, in his letter to Lord Ashburton, of August, 1842. In that letter Mr. Webster said as follows:

> "It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the state retains its jurisdiction over them; and, according to the commonly received custom, this jurisdiction is preserved over the vessels even in parts of the sea subject to a foreign dominion. This is the doctrine of the law of nations,

clearly laid down by writers of received authority, and entirely conformable, as it is supposed, with the practice of modern nations. If a murder be committed on board of an American vessel by one of the crew upon another or upon a passenger, or by a passenger on one of the crew or another passenger, while such vessel is lying in a port within the jurisdiction of a foreign state or sovereignty, the offence is cognizable and punishable by the proper court of the United States in the same manner as if such offence had been committed on board the vessel on the high seas. The law of England is supposed to be the same. It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must, doubtless, be answerable to the laws of the place. Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the statutes of governments founded on that law, as I have referred to them, show that *enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships, not only over the high seas, but into ports and harbors, or wheresoever else they may be water-borne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself.*"

In commenting upon the above language Mr. Justice FIELD said that Mr. Webster "stated with great clearness and force the doctrine which is now recognized by all countries."

The principle of law, that a seaman who ships upon a vessel becomes a seaman of the nationality of that vessel, is very clearly set forth by Mr. Justice FIELD in delivering the opinion of the Supreme Court *In re Ross, petitioner*,, 140 U. S., 453:

"The position that the petitioner, being a subject of Great Britain, was not within the jurisdiction of the consular court, is more plausible, but admits, we think, of a sufficient answer. *The national character of the petitioner, for all the purposes of the consular jurisdiction, was determinable by his enlistment as one of the crew of the American ship 'Butlion.' By such enlistment he becomes an American seaman—one of an American crew on board of an American vessel—and, as such, entitled to the protection and benefits of all the laws passed by Congress on behalf of American seamen, and subject to all their obligations and liabilities.* Although his relations to the British government are not so changed that, after the expiration of his enlistment on board of the American ship, that government may not enforce his obligation of allegiance, and he, on the other hand, may not be entitled to invoke its protection as a British subject; that relation was changed during his service of seaman on board of the American ship under his enlistment. *He could then insist upon treatment as an American seaman, and invoke for his protection all the power of the United States which could be called into exercise for the protection of seamen who were native born. He owes for that time to the country to which the ship on which he is serving belongs a temporary allegiance, and must be held to all its responsibilities.* The question has been treated more as a political one for diplomatic adjustment than as a legal one to be determined by the judicial tribunals, and has been the subject of correspondence between our government and that of Great Britain.

"The position taken by our government is expressed in a communication from the Secretary of State to the British government, under date of June 16, 1881. It was the assertion of a principle which the Secretary insisted 'is in entire conformity with the principles of English law as applied to a mercantile service almost identical with our own in its organization and regulation. That principle is that when a foreigner enters the mercantile marine of any nation and becomes one of the crew of a vessel having undoubtedly a national character, he assumes a temporary allegiance to the flag under which he serves, and in return for the protection afforded him becomes subject to the laws by which that nation, in

> the exercise of an unquestioned authority, governs its vessels and seamen. If, therefore,' he continued, 'the government of the United States has, by treaty stipulation with Japan, acquired the privilege of administering its own laws upon its own vessels and in relation to its own seamen in Japanese territory, then every American vessel and every seaman of its crew are subject to the jurisdiction which by such treaty has been transferred to the government of the United States.' "

It is clear, therefore, that by the general principles of international law and in the absence of local legislation, a vessel, while in the ports of a foreign country, has the right to ship seamen in that port under the terms and upon the conditions imposed by the law of the country whose flag it flies.

Not only has this doctrine the support of the authorities to which we have referred, but it has been expressly recognized and asserted by Congress.

Section 4517 of the revised statutes provides that every master of an American merchant vessel, who engages any seaman at a place out of the United States, shall engage such seaman before a consular officer or commercial agent, and the rules governing the engagement of a seaman before a shipping commissioner in the United States, shall apply to such engagement before a consular officer or commercial agent.

If the contention of the libellant in this case is to be supported there would be the singular spectacle of Congress asserting the right of an American vessel to ship a seaman in a British port under the provisions of the American law, but at the same time denying the right of a British vessel to ship seamen at an American port in accordance with the provisions of the British law.

The American legislation upon this point is identical with the provisions of the Merchants' Shipping Act of Great Britain, which was enacted in 1854, a number of years prior to the enactment of the law which was incorporated in section 4517 of the Revised Statutes.

In the *Montapedia*, 14 Fed. Rep. 427, Judge BILLINGS discusses the identical legislation of Great Britain and the United States upon this subject, and arrives at the conclusion that these laws must be considered as a mutual concession, that each nation in shipping seamen upon her merchant vessels is to follow its own laws.

If this is true, then such mutual legislation might be deemed a tacit convention (Vattel, Law of Nations, Sec. 25).

The question which arises in this case is whether Congress has the power to abolish the well-recognized principle of international law here before stated, and to assert that all contracts of shipment made in American ports with foreign vessels shall be made under the provisions of the American law.

We submit that Congress lacks such power; first, because the doctrines above set forth are firmly established principles of the law of nations, and that Congress or this country alone has not power to change the law of nations; and, second, that the validity of this contract is to be determined by the law of the place of performance, that is, British territory, and that Congress possesses no power of legislation over foreign territory.

Upon the first point, as to the inability of Congress or this country to change the established law of nations upon this subject, we call the attention of

the court to the decision in the case of the *Scotia*, 14 Wall., 170.

That case arose out of a collision between the American ship "Berkshire" and the English ship "Scotia." The American ship was guilty of fault in carrying a white light prohibited by the Navigation Rules of 1864. These rules were the first ever adopted and had been generally adopted by other nations. It was contended that the American law was a mere municipal regulation governing American vessels alone and that the English vessel was not entitled to complain of the failure of the "Berkshire" to comply with the American law. But the Supreme Court held otherwise, not on the ground that the municipal law had any extra territorial force or that the American law was to be applied, simply because the action was in an American court, but because the universal adoption of these rules by nearly all civilized nations had modified and changed the existing maritime law, and the rules, therefore, were applicable to vessels of all nations.

Mr. Justice STRONG, in delivering the opinion of the court, said, at page 187 :

> "It must be conceded, however, that the rights and merits of a case may be governed by a different law from that which controls a court in which a remedy may be sought. The question still remains, what was the law of the place where the collision occurred, and at the time when it occurred. Conceding that it is was not the law of the United States, nor that of Great Britain, nor the concurrent regulations of the two governments, but that it was the law of the sea, was it the ancient maritime law, that which existed before the commercial nations of the world adopted the regulations of 1863 and 1864, or the law changed after those regulations were adopted? *Un-*

*doubtedly, no single nation can change the law of the sea. That law is of universal obligation, and no statute of one or two nations can create obligations for the world. Like all the laws of nations, it rests upon the common consent of civilized communities.* It is of force, not because it was prescribed by any superior power, but because it has been generally accepted as a rule of conduct. Whatever may have been its origin, whether in the usages of navigation or in the ordinances of maritime states, or in both, it has become the law of the sea only by the concurrent sanction of those nations who may be said to constitute the commercial world. Many of the usages which prevail, and which have the force of law, doubtless originated in the positive prescriptions of some single state, which were at first of limited effect, but which when generally accepted became of universal obligation. The Rhodian law is supposed to have been the earliest system of marine rules. It was a code for Rhodians only, but it soon became of general authority because accepted and assented to as a wise and desirable system by other maritime nations. The same may be said of the Amalphitan table, of the ordinances of the Hanseatic League, and of parts of the marine ordinances of Louis XIV. They all became the law of the sea, not on account of their origin but by reason of their acceptance as such. And it is evident that unless general assent is efficacious to give sanction to international law, there never can be that growth and development of maritime rules which the constant changes in the instruments and necessities of navigation require. Changes in nautical rules have taken place. How have they been accomplished, if not by the concurrent assent, express or understood, of maritime nations? When, therefore, we find such rules of navigation as are mentioned in the British orders in council of January 9th, 1863, and in our Act of Congress of 1864, accepted as obligatory rules by more than thirty of the principal commercial states of the world, including almost all which have any shipping on the Atlantic Ocean, we are constrained to regard them as in part at least, and so far as relates to these vessels, the laws of the sea, and as having been ths law at the time when the collision of which the libellanto complain took place.

> "This is not giving to the statutes of any nation extra territorial effect. It is not treating them as general maritime laws, but it is recognition of the historical fact that by common consent of making, these rules have been acquiesced in as of general obligation. Of that fact we think we may take judicial notice. Foreign municipal laws must indeed be proved as facts, but it is not so with the law of nations."

There have been repeated instances of application of the law as here stated in the conventions of representatives of the different countries, called for the purpose of formulating general rules for preventing collisions at sea.

The contract of shipment entered into this case by the seamen of the "Eudora" was to be performed exclusively upon British territory, and, therefore, its validity is to be determined by the British law.

The appellant relies largely upon the decision of Judge BRADFORD, of the District Court for the District of Delaware, in the *Kestor*, 110 Fed. 432, and of Judge HANFORD, District Court for the District of Washington, in the *Troop*, 117 Fed., 557. It will be seen that in both of these decisions there is a fundamental error as to the law upon this subject. Both of them are based upon a supposed principle of law, that the essential validity of a contract is to be determined by the law of the place where it is executed. Judge HANFORD says that the general rule is, that the law of the place governs in the determination of all questions affecting the valid execution of contracts, and he seems to argue from that principle, that there was no execution of a valid contract. This is a singular confusion of the principles of law applicable to such cases. While it is true, generally speaking, that the law of the place

where a contract is executed governs the formalities of the execution, yet it has absolutely nothing to do with the essential validity of a contract, which is to be wholly performed elsewhere. There can be no serious contention in this case as to the formal execution of the contract. The only question is of its essential validity.

The errors which have frequently arisen out of misunderstanding as to the meaning of the term *lex loci contractus*, are clearly pointed out by this court in *Pritchard* v. *Norton*, 106 U. S., 124.

The general rule repeatedly declared by this Court is, that while there may be a presumption that a contract is to be performed at the place of its execution, but if the contract, by its terms, is to be performed elsewhere, the place of performance is the place of the contract and the law of that place will control. *London Assurance* v. *Companha de Moagens*, 167 U. S., 149; *Coghlan* v. *Ralroad*, 142 U. S., 101; *Hall* v. *Cordell*, 142 U. S., 116; *Andrews* v. *Pond*, 13 Peters, 65; *Miller* v. *Tffany*, 13 Wall., 310; *Pr tchard* v. *Norton*, 106 U. S., 124; *Steam Nav. Company* v. *Phœnx Insurance Company*, 129 U. S., 154.

The sovereignty of this country is co-extensive with its territory only, and Congress possesses no power of legislation upon British territory.

> *Hall's International Law*, 4th Edition, Sec. 10.

Congress, in this case, has not attempted to establish a mere law of the forum, but has attempted to regulate the essential validity of a contract. If Congress had attempted to establish the law of the

forum, then in every case of a suit brought in this country for sailor's wages against a British vessel, no matter whether executed in England or elsewhere, the American law would have to be applied. We do not suppose such a contention would be seriously made. Therefore, this legislation of Congress can be sustained only if its right to legislate over a contract to be performed upon British territory would be recognized by the courts of every country, under the general principles of international law.

What reasons are given in support of the contention, that Congress has authority to govern such contracts? The appellant relies principally upon the cases of the *Kestor*, *supra*, and the *Troop*, *supra*.

We have already pointed out the fundamental error made in these cases in the assertion of a supposed principle of law, that the essential validity of a contract is to be determined by the law of the place of execution, and the consequent error that because the contract was executed upon American territory Congress had the power to legislate, not merely as to the formalities of execution, but as to the validity of its essential provisions. The mere fact that the contract was signed in New York, in itself, does not give Congress the power to declare the contract invalid, or to punish as a crime the payment of wages in advance, because Congress has no general power to declare contracts unlawful and the execution of the contract upon the soil of the State of New York certainly excludes the congressional power of legislation, unless it is granted under the commerce clause.

Judge BRADFORD in the case of the *Kestor*,

*supra* has fallen into another error, in failing to follow the principle declared by this Court *in re Ross*, *supra*, and other cases, that is, that a seaman by shipping upon a foreign vessel becomes a seaman of the country of that vessel.

It will be seen by a reference to the opinion in the *Kestor* case, that the learned Judge was of the opinion that there was some difference between American citizens enlisting on an American vessel and foreign citizens enlisting upon the same vessel, so far as the application of the act of Congress was concerned. He refers at some length to the difficulties which would arise out of the misrepresentation of nationality by seamen at the time of shipment on American or foreign vessels. It is true that much difficulty would arise, if the law were as the learned Judge assumes, that is, that a British subject shipping upon an American vessel, would be a British seaman and that an American subject shipping upon a British vessel, would still be an American seaman. There can be no question but if that rule were correct, great confusion would ensue. According to that theory, if a vessel had on board seamen shipped at ports of different countries, for instance, in America, England, France and Germany, their rights and duties would be determined by the laws of the country, where they actually shipped, rather than by the law of the flag of the vessel. In order to do full justice to his crew, under these circumstances, the master would have to be more than a sea lawyer. If the American and the French sailor were guilty of disobedience, the master dare not flog the former, but possibly might so punish the latter. The American sailor would be entitled to demand the food prescribed

by American law, the English sailor would probably be alone entitled to grog and the French and German sailor would each demand different food. Hopeless, indeed, would be the confusion which would result from the application of that principle. The difficulty is avoided, not as Judge BRADFORD has assumed, by the application of the law of the place where the sailor ships, or the law of his nationality, which would only increase the confusion, but it is prevented by the application of the principle declared by the Supreme Court *in re Ross*, that is, no matter what may be the nationality of the seaman, *by enlistment on a British vessel he becomes a British seaman*, and as such entitled to the protection and benefits of the British Merchants' Shipping Act and subject to all its obligations and liabilities.

This principle does not seem to have been called to the attention of Judge TOULMIN in the *United States* v. *Nelson*, 100 Fed., 125, as he there lays down a different rule (although his remarks are but *dicta*), that the acts of Congress passed for the benefit of "American seamen," mean, not seamen on American vessels, but Americans whose occupation is that of seamen. It is respectfully submitted that this ruling is in conflict with the decision of the Supreme Court *in re Ross*, as it would be an attempt to legislate for seamen upon foreign vessels, and would deprive foreigners serving upon American vessels of the benefit of the American law.

## II.

**The power of Congress, under the commerce clause, to regulate shipping contracts of seamen with a foreign vessel.**

If the attempt on the part of Congress to regulate a contract between a foreign vessel and seamen shipping upon it can be sustained at all, it must be on the ground that it had such power under clause 3 of section 8 of article 1 of the Constitution, providing that Congress shall have power "to regulate commerce with foreign nations and among the several states, and with the Indian tribes." No other clause has any application.

If that clause contains no grant of legislative power to Congress over such contracts, then the right to regulate them, if it exists in any legislative body in this country, which is denied, must be vested in the legislatures of the several states, under the reservation to them, in the 10th Amendment to the Constitution, of the powers not delegated to the United States.

The question, therefore, which this case presents is whether the provision of the act of 1898, prohibiting the master of a foreign vessel from entering into a contract to pay the wages of a seaman in advance, is a valid exercise of the power conferred upon Congress to regulate commerce with foreign nations.

The authorities construing the term commerce have been so fully collected and considered recently in one of the lottery ticket cases (*Champion* v. *Ames*, 188 U. S.—), that no extended citation or discussion of them is necessary. The construction of the term in all of the opinions, from that of

Chief Justice MARSHALL in *Gibbons* v. *Ogden*, 9 Wheat. 1, to *Champion* v. *Ames*, *supra*, is that the word commerce has a double significance, including traffic, that is, the buying and selling or interchange of commodities, and commercial intercourse or the carriage of those commodities.

The term has been held to include not only the carriage of merchantable commodities, but also the carriage of passengers (*Passenger Cases*, 7 How., 283); bills of lading, because they represent the goods carried (*Woodruff* v. *Farham*, 8 Wall., 123), and the transmission of ideas, wishes, orders and intelligence by telegraph (*Western Union Telegraph Co.* v. *Pendleton*, 122 U. S., 347). It has also been held to include navigation (*Gibbons* v. *Ogden*, 9 Wheat. 1.)

In *Champion* v. *Ames*, *supra*, Mr. Justice HARLAN, in delivering the opinion of the Court, thus summarizes the decisions construing the term commerce:

> "The cases cited, however, sufficiently indicate the grounds upon which this court has proceeded when determining the meaning and scope of the commerce clause. They show that commerce among the States embraces navigation, intercourse, communication, traffic, transit of persons and the transmission of messages by telegraph."

It will be noticed that it has been held that navigation is within the scope of the commerce clause of the Constitution. But as the term navigation has been used in the decided cases, it is almost equivalent to commercial intercourse or to the carriage and transportation of goods. The expression was first used by Chief Justice MARSHALL in *Gibbons* v. *Odgen*, 9 Wheaton 1, and it was there held that

the power to regulate commerce includes the power to regulate navigation.

A consideration of the facts of that case will show that the word navigation was there used in the sense of transportation, or carriage of goods.

The legislature of New York had enacted a statute granting to Robert R. Livingston and Robert Fulton, the exclusive navigation of all of the waters within the jurisdiction of that state, with boats moved by fire or steam, for a term of years and authorizing the chancellor to award an injunction restraining any person whatever from navigating those waters with boats of that description.

Odgen became the assignee of that right and sought to restrain Gibbons, who was in possession of two steamboats, from employing them in running between New York and Elizabethtown, New Jersey. These statutes were held by this court to be invalid, because repugnant to the commerce clause of the Constitution, as that clause included the navigation of the navigable waters of the United States, by vessels engaged in interstate or foreign commerce. The effect of the New York statute was to create an obstruction to interstate traffic by depriving any person, other than those named in the statute, from engaging in the interstate carriage of goods or passengers by steamboats.

At the time of that decision (1824) the principal part of interstate and foreign commerce was carried on by vessels and in saying that navigation was commerce, the court only applied to the facts involved, the broader principle declared, that is, that commerce included not only traffic in goods, but the carriage or transportation of them, and held that

navigation, being one method of interstate carriage, was commerce.

In thus asserting that navigation, being a kind of carriage of goods, was commerce, and that the removal of an obstruction to it was within the power of the federal government, the court declared the doctrine which has been since repeatedly asserted, that is, that the federal government has full power to remove obstructions of every character, artificial or natural, which in any way interfere with or regulate the carriage of goods between the several states. Under the power to regulate interstate commerce the federal government has the power to improve navigable streams and to remove natural obstructions to navigation or commerce (*County of Mobile* v. *Kimball*, 102 U. S., 691), or an obstruction to interstate carriage by a mob. *In re Debs*, 158 U. S., 564. *Gibbons* v. *Ogden*, *supra*, is an instance of the right of the federal government to remove obstructions created by a state.

In *Hooper* v. *California*, 155 U. S., 648, it was said by Mr. Justice WHITE, that the authority to regulate interstate commerce gives Congress the power to regulate the instrumentalities thereof. The decisions have not clearly defined what constitute these instrumentalities or the scope of the regution thereof, but it must be assumed that Congress has the right to regulate the navigation of a ship, in a broader sense than that term was used in *Gibbons* v. *Ogden*, *supra*. But such regulation of the ship, as an instrumentality of commerce, must be limited to its business as a ship engaged in the carriage of goods or passengers, and not to those incidental contracts which shipowners may enter into for the

purpose of carrying on their business as carriers. For instance, Congress unquestionably has the right, under the commerce clause, to adopt sailing rules to prevent collisions, by regulating the navigation of vessels while upon the navigable rivers of the United States. But would it be seriously contended that because a ship may be an instrumentality of commerce, Congress would have the right to regulate a contract with a ship builder for construction of a vessel, or one for the purchase thereof, or one for the purchase of food for the passengers about to be carried, or of a contract for the purchase of bunker coal to enable the steamship to engage in interstate traffic?

The true line of demarcation between the power possessed by Congress, under the commerce clause, and that reserved to the several states, seems to be that Congress may regulate the relations of the carriers, *as carriers*, with the public, but that those contracts which are incidental only to the carriage of goods, in interstate or foreign commerce, are purely local in character and such regulation of them as is lawful, is reserved to the several states.

If Congress could regulate such contracts, then under the guise of a statute to regulate interstate commerce, it could control every contract entered into by a railway carrying goods between two states, to enable it to perform its business of carriage. It could regulate its contracts of employment with its servants, its contracts for the purchase of rails and of ties and of its entire rolling stock and equipment. Surely no such contention would be seriously made.

The commerce clause does not give Congress

the right to regulate a contract, merely because one of the parties to it happens to be engaged in interstate or foreign commerce, but only when the contract relates to commerce.

It is the subject matter of the contract and not the character or business of one of the parties which brings the contract within congressional control under the commerce clause.

The contract in this case is similar to one of insurance, which this court in *Paul* v. *Virginia*, 8 Wall., 168, held not to be commerce but a contract merely in aid of commerce.

Mr. Justice FIELD said in delivering the opinion in that case (p. 183):

> "Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States. The policies do not take effect—are not executed contracts—until delivered by the agent in Virginia. They are, then, local transactions, and are governed by the local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York, whilst in Virginia would constitute a portion of such commerce."

In *Hooper* v. *California*, 155 U. S., 648, it was argued that a contract for marine insurance was

commerce, but the court following its previous decision in *Paul* v. *Virginia*, held otherwise. In delivering the opinion of the Court, Mr. Justice WHITE said (p. 653):

> "It is evident, then, as we have said above, that the attempt to so distinguish between policies of marine insurance and policies of fire insurance, as to reach the deduction that there is a constitutional difference between the business of a corporation issuing polices of the other kind, which affects the question of a State's authority to control the business of either, is based upon a fundamental misconception of the nature of the constitutional provision relied upon. It ignores the real distinction upon which the general rule and its exceptions are based, and which consists in the difference between interstate commerce or an instrumentality thereof on the one side and commerce on the other. This distinction has always been carefully observed, and is clearly defined by the authorities cited. *If the power to regulate interstate commerce, applied to all the incidents to which said commerce might give rise, and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the States; and would exclude State control over many contracts purely domestic in their nature.*
>
> The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse, and in this respect there is no difference whatever between insurance against fire and insurance against 'the perils of the sea.'"

In the consideration of this aspect of the case care must be taken not to confuse the control of Congress over the contracts of a foreign vessel, not directly relating to the carriage of goods and the legislative control exercised by Congress over American vessels. It is denied that Congress has the right to enact a statute of this character, even

as to American vessels; but, on the other hand, it is admitted that over American vessels Congress has unquestionably greater authority and control than over foreign vessels. This authority over American vessels is not based upon the commerce clause of the Constitution, however, but is due to the fact that the United States possesses the same police power over American vessels, as the several states possess over territory within their limits. The authority of Congress to create an American merchant marine may be traced to the commerce clause, but, as upon the creation of such property, it becomes national in character, and not a part of the territory of any state, Congress has full police power over it.

The doctrine is now firmly established that a vessel is a detached, floating portion of the territory of the country whose flag it flies. *The Scotia*, 14 Wall., 170-184; *In re Ross*, 140 U. S., 453; *Wilson* v. *McNamee*, 102 U. S., 572, 574; *The Lamington*, 87 Fed., 752; 1 *Kent Com.*, 26; *Wheaton's International Law* (Dana's ed.), 106; 3 *Wharton International Law*, *supra*, 228: *Vattel's Law of Nations*, bk. 1, chap. 19, sec. 216; *Bluntschli*, sec. 319; *Seagrove* v. *Parks*, 1 Q. B. D., 551.

An American vessel, registered or enrolled in accordance with the laws of the United States, being thus a detached portion of the national territory, and not a part of the territory of any particular state, Congress, over such vessels, has the same police power as the various states have over the territory within their limits.

*U. S.* v. *De Witt*, 9 Wall., 41.

This police power was recognized and asserted by the framers of the Constitution when they conferred upon Congress the power to define and punish piracy and felonies committed upon the high seas.

The basis of the authority of Congress over American vessels was discussed in the case of *White's Bank* v. *Smith*, 7 Wall., 646.

In that case the question was as to the authority of Congress to pass the recording act of July 29, 1850, regulating the recording of bills of sale and mortgages of vessels of the United States. A mortgage upon the schooner "Emmett" was recorded in the office of the Collector of Customs at Buffalo, in accordance with the provisions of the above act, and the power of Congress over the title and property of vessels of the United States, to such an extent as to enable it to pass a recording act, was questioned.

In delivering the opinion of the Court sustaining the power of Congress to pass the act of 1850, Mr. Justice NELSON said:

> "*Ships or vessels of the United States are the creations of the legislation of Congress.* None can be denominated such or be entitled to the benefits or privileges thereof, except those registered or enrolled according to the Act of September 1, 1789; and those which, after the last day of March, 1793, shall be registered or enrolled in pursuance of the Act of 31st December, 1792, and must be wholly owned by a citizen or citizens of the United States, and to be commanded by a citizen of the same."

Bearing in mind this distinction between the power of Congress over American and foreign vessels, it is obvious that Congress may have greater legislative power over the former than the latter, and the validity of a provision governing American vessels, therefore, is not the true test of the validity

of legislation attempting to control contracts entered into by seamen with foreign vessels, while lying at our ports.

Confining the authority of Congress over the contracts of foreign vessels to its true limit, that is, to the power to regulate foreign commerce, a single question arises.

Does a contract for the employment of a seaman upon a foreign vessel, in an American port, fall within the scope and meaning of the commerce clause, as heretofore construed by the Court? To ask this question is to answer it. The contract is one of that large class which may be incidental to the carriage of goods or passengers, but it is not a contract for carriage or transportion, and it is therefore beyond the legislative control of Congress. Congress having no authority over such contracts, other than conferred by the commerce clause, the Act of 1898, in so far as it applies to foreign vessels, is invalid.

## III.

**The prohibition contained in the act of 1898 against the payment of wages to a seaman in advance is a violation of the liberty to contract, guaranteed by the Constitution.**

The act of 1898 provides as follows:

> "Sec. 10. That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same or to pay such advance wages to any other person.
>
> Any person paying such wages shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months, at the discretion of the court

> The payment of such advance wages shall in no case, excepting as herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages.
>
> If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offence be liable to a penalty of not more than one hundred dollars."

If a shipping contract made by seamen with a foreign vessel is not foreign commerce, and Congress therefore lacks the power to legislate over it, that is the end of the case; but suppose for the purpose of the argument that Congress has such power, are not the above quoted sections unconstitutional, because they prohibit the fundamental right to enter into a contract, guaranteed by the constitution?

Under the decision in *Champion* v. *Ames*, 188 U. S.—Congress apparently has the same plenary powers of regulation and control over all interstate and foreign commerce, as the various states have over their internal affairs under their police power and Congress may, in its discretion, regulate or prohibit such commerce where, if carried on would, in its judgment be prejudicial to public health, public safety or public morals or general public welfare. If, therefore, Congress has the right to legislate over contracts of seamen with foreign vessels, because such contracts are commerce, it would seem to have the same plenary powers over them as it would have over contracts of seamen upon American vessels, under the police power, which we

ave heretofore argued that Congress has over American vessels.

Assuming, however, that Congress has such plenary power, either under the commerce clause, as concerns foreign vessels, or the police power over American vessels, it does not follow that the power is without limitation or restriction, and that it may arbitrarily exercise such power without restraint.

By the fifth and fourteenth amendments to the Constitution is guaranteed the right of the individual to enter into all lawful contracts which may be necessary or essential to carry out a business or occupation not contrary to law.

In delivering the opinion of this court in *Allgeyer* v. *Louisiana*, 165 U. S., 579, Mr. Justice PECKHAM, in delivering the opinion of the court, thus construes the constitutional guarantee of liberty:

> "The liberty mentioned in that amendment means not only the right of the citizen to be free from mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to successful conclusion the purposes above mentioned."

This general statement of the law has been repeatedly approved by this court, and in as late a case as *Champion* v. *Ames*, *supra*.

This constitutional guaranty of liberty to contract does not necessarily mean that Congress or the legislatures of the various states shall not have the

power to prohibit contracts at all. The constitutional grant of liberty to contract is limited to some extent by both the commerce clause and the police power, but on the other hand, neither the commerce clause nor the police power can pass beyond its limits. The grant of liberty does not give the right to enter into a contract which Congress or the state legislatures have the power to declare unlawful, but it does secure and protect the fundamental rights enumerated by Mr. Justice PECKHAM in *Allgeyer* v. *Louisiana*, *supra*.

While it is true that is largely in the discretion of the legislatures of the several states or of Congress to decide when public policy requires the prohibition of certain contracts, yet on the other hand the mere fact that the enactment purports to be for the regulation of commerce, the protection of public safety, public health or public morals is not conclusive upon the courts.

*Mugler* v. *Kansas* 123 U. S., 661; *Lawton* v. *Steele*, 152 U. S., 133; *Booth* v. *Illinois*, 184 U. S., 425; *Otis* v. *Parker*, 187 U. S.,—; *Champion* v. *Ames*, 188 U. S., —

In the latter case, Mr. Justice HARLAN said, in delivering the opinion of the court:

> "The present case does not require the court to declare the full extent of the power that Congress may exercise in the regulation of commerce among the states. We may, however, repeat, in this connection, what the court has heretofore said, that the power of Congress to regulate commerce among the states, although plenary, cannot be deemed arbitrary, since it is subject to such limitations or restrictions as are prescribed by the Constitution. This power, therefore may not be exercised so as to infringe rights secured or, protected by that instrument. It would not be difficult

> to imagine legislation that would justly be liable to such an objection as that stated, and be hostile to the objects for the accomplishment of which Congress was invested with the general power to regulate commerce among the states. But as often said, the possible abuse of a power is not an argument against its existence. If what is done by Congress is manifestly in excess of the power granted to it, then upon the courts will rest the duty of adjudging that its action is neither legal nor binding upon the people."

The broad question which this case raises is whether legislation in this country prohibiting a contract whereby an employer agrees to pay wages to an employee in advance of the time they are earned, is void under the constitutional guarantee of the liberty to contract. If such legislation is unconstitutional then the prohibition is equally invalid whether the contract be made with an American or foreign vessel.

The decided cases upon this subject throw little or no light upon the present case, because as this court has said, only general principles can be declared, and no fixed or invariable rule can be applied to such cases. It is a question for the determination of the court in each case, whether the statute is in violation of the fundamental rights guaranteed by the constitution.

In *Holden* v. *Hardy*, 169 U. S., 366 (1897), this court decided that a statute of Utah, providing that the period of employment of miners working in all underground mines or workings should be eight hours per day, excepting in cases of emergency, was a valid exercise of the police power of the state and did not violate the provisions of the fourteenth amendment to the Constitution of the United States by abridging the privileges or immunities of its

citizens or by depriving them of their property or denying to them the equal protection of the laws.

It was argued with much force that this statute was illegal, because it violated the fundamental right of an employer and his employees to regulate the hours of labor by a contract entered into by them, but it was held that the statute was a lawful exercise of the police power of the state for the *maintenance of public health.*

The opinion delivered by Mr. Justice BROWN so fully considers the previous decisions of this court, and of the various state courts in relation to this subject, and the principles of law declared in them, that an extended discussion of them here is unnecessary.

One of the most recent decisions upon this subject is *Knoxville Iron Company* v. *Harbison*, 183 U. S., 13 (1901), where it was held that an act of the legislature of the state of Tennessee, requiring redemption in cash of store orders or other indebtedness issued by employers in payment of wages due to employees, does not conflict with any provision of the constitution of the United States relating to contracts.

The opinion of Mr. Justice Shiras relies very largely upon the decision of the Supreme Court of Tennessee, from which he quotes largely. It is said in the opinion of the Supreme Court of Tennessee that the act in question contains no prohibition against the issuance of any of the obligations referred to nor against payment in merchandise or otherwise according to their terms, but only a provision that they shall be paid in money at the election, and upon a prescribed demand of the owner.

The distinction between that case and the present one seems clear. The contract of employment in that case contained no provision that the employee should receive compensation for his services in merchandise or coal, and the facts show that the acceptance of these orders was purely optional with the employee and that many of the employees did not accept them. Apparently, therefore, all that was decided in that case, was that where there was a contract that the laborer should receive a fixed compensation, that the legislature, under the police power, could provide that he should receive that compensation in money.

But would the legislature have the right to prohibit a contract of employment, containing an agreement that the laborer should receive compensation for his services in coal or other merchandise? Such an act would clearly seem to be a violation of the constitutional guarantee of the right to enter into a contract in the pursuit of a lawful calling. If a legislature could so provide, then it would have the power to absolutely prohibit the bartering of commodities and could prohibit every interchange, except a sale, where the person disposing of the property would receive money in payment therefor.

It was held in *Addyston Pipe Company* v. *U. S.* 175; U.S. 211, that Congress, under the power of regulating commerce amongst the states, may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations, where the natural and ordinary effect of such a contract shall be, if carried out, directly and not as a mere incident to other and innocent purposes to regulate to any extent interstate or foreign commerce, and that as Congress possessed this power

under the commerce clause, the provision in the Constitution regarding the liberty of the citizen is to some extent limited by it.

*Booth* v. *Illinois*, 184 U. S. 425, and *Otis* v. *Parker*, 187 U. S. —, both sustain the power of a state to prohibit the purchase and sale of grains and stocks upon margins, &c. It was held that the state legislatures had the power to prohibit such contracts, because they tended to foster gambling contracts.

In the latter cases the states acted upon the principle that the contracts were opposed to public morals. But no such question arises in this case. Surely it would not be argued that a contract, whereby one man agrees to work for another, is immoral or is opposed to the public welfare of the state. How can it be converted into one which is opposed to public morals or general welfare by an agreement to pay the wages or any part of them in advance? If the servant obtains compensation for all the work he performs, without reference to the time of payment, is either he or the public welfare injuriously affected?

If a sailor, either in idleness, or debauchery, spends all of his money and gets into debt, before shipping, and sees fit to receive a portion of his wages in advance, to pay the debts so incurred, why is such an agreement immoral or opposed to public welfare? Why should a shipmaster who pays a seaman all of his wages, even if in advance, be subjected to the payment of the wages again, and to a penalty and imprisonment?

There is not the slightest contention in this case that the claimant took the slightest advantage of the libellants, nor that they did not receive ful- compensation for all service performed.

It may be said that the sailor is improvident and ought to be protected against his own improvidence. The better way to remedy that difficulty would seem to be for the seaman to reform—not to break the constitution and to punish the shipmaster for the improvidence of the sailor, by prohibiting him from paying wages in advance, under penalty of paying double wages to the seaman, and of fine and imprisonment.

As illustrating the character of this legislation, we call attention to the further provision of the act that it shall be a penal offence for any person to receive any remuneration from a seaman for procuring employment. Can such legislation be sustained? What immorality is there in the securing of employment for a seaman? And is it not an inviolable, fundamental right of every man to receive compensation for his service? Would an act requiring a seaman to work without compensation be lawful? No one would so contend. But if the seaman is entitled to compensation for his service, can he be absolved from paying others for service rendered to him? If Congress can require the man who conducts an intelligence office to render service to a seaman, without compensation, where does its power stop? If it has such power it can prohibit the boarding-house keeper from charging for board or the merchant for clothing. If contracts of this character can be regulated and prohibited by Congress, then the constitutional guarantee of the right to enter into a contract, in pursuit of a lawful calling, would seem to be purely mythical. If such contracts can be lawfully prohibited, it is difficult to imagine one which would be beyond the regulation of the legislative power.

## IV.

**Taking of private property without due process of law.**

If further objection to the validity of this statute be needed, it may be found in that portion which provides that in no case shall the payment of wages in advance absolve the vessel, or master, or owner thereof, from payment in full after such wages shall have been earned. In other words, the provision is that the seaman shall receive double compensation for the same service. This is pure confiscation of the private property of the owner of the vessel, and deprives him of private property without due process of law.

## V.

**The Jurisdiction of the Admiralty Courts Over Wages, Claims of Seamen Against Foreign Vessels.**

In conclusion, we desire to call the attention of the court to the character of the jurisdiction exercised by the court below in this case. It is not a case where the jurisdiction of the court was compulsory. The libellants, being alien seamen, were not entitled to demand, as a matter of right, that the court should exercise jurisdiction over their claim against the "Eudora," a foreign vessel.

It is unnecessary to argue at length as to the jurisdiction of the admiralty courts over wages claims, against a foreign vessel. The rule is universally accepted that the courts may, from motives of convenience, or of international comity, take jurisdition of suits between foreigners, not arising in the country of the forum. But where the foreigners

may resort to the courts of their own country without inconvenience, our courts generally decline to take urisdiction. Applying this rule the courts of this country have generally held that they will, in their discretion, take jurisdiction over claims of seamen against a foreign vessel where the voyage is ended in this country, or where the seamen have been dismissed or treated with cruelty. To decline to take jurisdiction in such cases would, in nearly all instances, deprive the seamen of any redress for wrongs. But on the other hand, the courts have declined to take jurisdiction over claims of foreign seamen, where there would be no hardship in compelling them to go to courts of the country of the vessel.

The *Walter A. Wallet*, 66 Fed. 1011, is an illustration. There the court declined to take jurisdiction over a claim of a British seaman for injuries received on a British ship on the high seas, because the seaman had not been discharged but would be returned to England on the vessel.

The law upon this subject has been stated by Mr. Justice BRADLEY in the *Belgenland*, 114 U. S., 355, at page 363, as follows:

> "For circumstances often exist which render it inexpedient for the Court to take jurisdiction of controversies between foreigners in cases not arising in the country of the forum; as, where they are governed by the laws of the country to which the parties belong, and there is no difficulty in a resort to its courts; or where they have agreed to resort to no other tribunals. *The cases of foreign seamen suing for wages, or because of ill treatment, are often in this category; and the consent of their consul, or minister, is frequently required before the Court will proceed to entertain jurisdiction; not on the ground that it has not jurisdiction, but that, from motives of convenience or international comity, it will use its discretion*

*whether to exercise jurisdiction or not;* and where the voyage is ended, or the seamen have been dismissed or treated with great cruelty, it will entertain jurisdiction even against the protest of the consul. This branch of the subject will be found discussed in the following cases: 'The Catherina,' 1 Pet. Adm., 104; 'The Forsoket,' 1 Pet. Adm., 197; 'The St. Oloff,' 2 Pet. Adm., 428; 'The Golubchick,' 1 W. Rob., 143; 'The Nina,' L. R. 2 Adm. and Eccl., 44; S. C. on appeal; L. R. 2 Priv. Co., 38; 'The Leon XIII,' 8 Prov. Div., 121; 'The Havana,' 1 Sprague, 402; 'The Becherdass Ambaidass,' 1 Lowell, 569; 'The Pawashick,' 2 Lowell, 142."

"In the absence of such treaty stipulations, however, the case of foreign seamen is undoutedly a special one, when they sue for wages under a contract which is generally strict in its character, and framed according to the laws of the country to which the ship belongs; framed also with a view to secure, in accordance with those laws, the rights and interest of the ship owners as well as those of master and crew, as well when the ship is abroad as when she is at home. Nor is this special character of the case entirely absent when foreign seamen sue the master of their ship for ill treatment. On general principles of comity, admiralty courts of other countries will not interfere between the parties in such cases unless there is special reason for doing so, and will require the foreign consul to be notified, and, though not absolutely bound by, will always pay due respect to his wishes as to taking jurisdiction."

Although the certificate from the Circuit Court of Appeals to this court does not so show, yet the District Court took jurisdiction only after notice to the British Consul at Philadelphia.

The cases where wages have been allowed by the admiralty courts of this country to seamen upon foreign vessels, in accordance with the law of the country of the vessel, are too numerous to mention.

Since the decision in the *Catherine*, 1 Pet., 104 and the *Forsoket*, id, 197, there is an unbroken line of decisions in the admiralty courts following out

this principle. So far as we have been able to discover the decisions in the *Kestor*, *supra*, and the *Troop*, *subra*, are the only ones in the history of the jurisprudence of this country, where it has been held that the local and not the foreign law applies to the wages claims of sailors upon foreign vessels.

Not only does this rule apply to wages cases, but to all questions governing the rights and duties of seamen upon foreign vessels.

In the *Sirius*, 49 Fed., 825, the court applied the provisions of the British law as to the plimsol mark, in favor of the seamen.

In the *Amalia*, 3 Fed., 652, the court held that the seamen upon a Swedish vessel, were entitled to their discharge before the end of the voyage, because the master had violated the laws of Sweden, as to the proper provisions, by reason of which they became entitled to their discharge.

In the *Kambria*, 100 Fed., 118, the court ordered certain seamen upon a British vessel released, holding that they were so entitled under the British law

The British law has been applied to cases of personal injuries upon British vessels, while on the high seas or in British waters.

*Egyptian Monarch*, 36 Fed., 773;
*Lamington*, 87 Fed., 752.

Applying the rule above stated, it is obvious that the District Court did not exercise jurisdiction, as a duty imposed upon it by the Constitution, but was acting by comity, for the courts of Great Britain. The practice in such cases is, that instead of imposing upon the seamen the hardship of going to the country of the vessel to bring suit, our courts will exercise jurisdiction in aid of justice.

Our courts say in such cases *that they will act for the courts of the foreign country*, in order that justice shall be done to the seamen. It necessarily follows that when, under such circumstances, the courts take jurisdiction *they are bound to follow the foreign law.* They assume jurisdiction for *that very purpose* and to determine the rights and duties of the foreigners, by the law of their own country.

If the courts were bound to apply the local law in these cases, then the rights of the parties would be determined, not by any settled principle of law, but by mere chance. If under such a rule a court saw fit to exercise jurisdiction, the rights of the parties would be determined by local law, but if the court declined to exercise jurisdiction, the parties would have their own law applied in their own country.

It is submitted, therefore, that where the courts, in their discretion and in a spirit of comity, exercise jurisdiction in these cases they are entirely beyond the control of Congress. They act under the constitutional grant of jurisdiction over all admiralty and maritime causes.

Congress would be powerless to compel the federal courts to assume jurisdiction in such cases, and consequently they are equally powerless to require a court, which from motives of international comity, in its discretion, sees fit to take jurisdiction of an action between foreigners, to apply the local law in an action, instead of the foreign law properly applicable.

HORACE L. CHEYNEY,
JOHN F. LEWIS,

*Counsel for Claimant of Bark* "Eudora," *Appellee.*

FILE COPY.

No. 278. October Term, 1902.

IN THE

# Supreme Court of the United States.

Office Supreme Court U. S.
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MAY 8 1903
JAMES H. McKENNEY

B. M. PATTERSON, EDWARD JANSEN, SVEN FREEMAN, E. THOMPSON, SIMON ANDERSON and KARL STEVENSON, Seamen,

*Libellants-Appellants,*

*v.*

The British Bark "EUDORA," Whereof ALFRED E. DICKSON is Claimant,

*Appellee.*

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**Certified from the United States Court of Appeals for the Third Circuit.**

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# Supplemental Brief of Dickson, Claimant of Bark "Eudora," Appellee.

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HORACE L. CHEYNEY,
JOHN F. LEWIS
*Counsel for Appellee.*

722 Bourse Building,
Philadelphia.

IN THE

# Supreme Court of the United States.

B. M. PATTERSON, *et al.*, *Appellants*,
*v.*
The Bark "EUDORA," whereof ALFRED E. DICKSON is master and claimant.

No. 278.

October Term, 1902.

## SUPPLEMENTAL BRIEF FOR APPELLEE.

In reply to the brief filed on behalf of the United States, we desire to call the attention of the court to the following matters :

1. The interest of the government in this controversy is not clear. The action is not one to enforce the penal provision of the act, in which the government would properly be interested, but is one by certain seamen to recover compensation for services for which they have been admittedly already paid in full. It may be that the provision of the act granting double compensation to the seamen is invalid, although the penal provision may be valid. The right of the government to punish A for an attempt to pass counterfeit money upon B, is beyond question, but it would not necessarily follow because Congress

possesses power to declare that offence a penal one, it could also provide, that by reason of the attempt of A to pass counterfeit money upon B the former should be compelled to give all of his property or any part of it to B, although the latter had suffered no loss. This would clearly be a taking of the property of A without due process of law.

The Bureau of Navigation is not charged with the enforcement of this provision of the Act of 1898. If the penal provisions of the act are invoked the Department of Justice acts directly (see Brief of U. S., p. 7), while if the seamen attempt to recover double compensation the action is a private one.

The statement, therefore, that the Bureau of Navigation has decided the constitutionality of this provision by applying the law, as declared in the *Kestor* case, is interesting, but hardly conclusive, especially as we are advised that the act in question was largely prepared in the Bureau of Navigation. One would hardly expect that Bureau to declare the illegitimacy of its own offspring.

2. The brief of the government contains (page 2) a letter from the acting Secretary of the Treasury to the Attorney General, dated November 10, 1902. It will be seen that this letter is but part of the correspondence which had already taken place. It also refers to certain correspondence between the Ambassadors of Great Britain, Germany and France, and the State Department, as to the crimping and desertion of seamen from foreign vessels.

If any effect whatever is to be given to this correspondence, the full correspondence between the

Treasury Department and the Department of Justice and that passing between the State Department and the various ambassadors, should have been inserted, and not a mere fragment of it. It seems probable that if the correspondence of the British Ambassador with the State Department had been inserted that it would have shown that it had absolutely no bearing upon the payment of seamen's wages in advance. It seems incredible that the British Ambassador would have protested to the Department of State against the payment of wages in advance by the master of a British vessel, at an American port, when such payments are permitted by the express provision of the Merchant's Shipping Act of Great Britain.

3. The letter of the Acting Secretary of State contains some inaccuracies to which we desire to call attention.

It is stated that Section 24 of the Act of 1898 relates to the allotment of seamen's wages and is a measure to suppress crimping.

Section 24 of the Act of 1898 does not relate to allotments at all, as the acting secretary has assumed, but to the payment of wages in advance. Between the two there is a well recognized distinction.

Nor is Section 24 of the Act of 1898 a measure to suppress crimping. The influences and factors which brought about that legislation are well known in shipping circles, and it may be confidently stated that the purpose was not to suppress crimping. Even the context of the act so shows. It would seem incredible that Congress, with an intention and

desire to prohibit crimping, would impose a penalty upon the master of the vessel, who commits no offence, moral or otherwise, in paying wages in advance, and at the same time would make no provision for punishing the shipping agent, the very person the government argues is guilty of the offence of crimping.

The purposes of this legislation, however, are not important. The only question before the court is the power of Congress, and not one of policy.

4. It is argued on behalf of the government that because Congress can place an embargo on foreign commerce, that it can "clearly prescribe the conditons upon which foreign vessels may touch at our ports and enter and ship their crews in our ports" (p. 8). From this it is argued that "given this power to control and regulate the shipment of crews on foreign vessels in our ports, Congress must equally have the power to prohibit the advance payment of wages." It does not follow, as assumed by the government, that because Congress has the power to lay an embargo upon foreign commerce, that it has the right to regulate every contract of a foreign vessel in our port where no embargo is laid. It is well recognized that Congress has the power to absolutely prohibit foreign commerce, that is, the sale or interchange and the transportation of goods, if, in its judgment, such legislation is necessary to promote the general welfare of the people. This power exists, however, because Congress acts clearly within the scope and meaning of the term *commerce*, as defined by this court. But it does not follow that because Congress

may prohibit that which is actual commerce, that it may also regulate contracts, where commerce itself is not prohibited, made by the master of a foreign vessel while at one of our ports, which are not commerce but merely incidental thereto.

As Congress has not prohibited such commerce, the question resolves itself into one whether a contract of employment made at an American port by seamen for service upon a foreign vessel is commerce within the meaning and scope of that term as construed by this court. This question has been fully argued in our original brief.

5. The appellant argued broadly at bar of the court that this legislation could be sustained under the exercise of the police power by Congress and that position seems also to be taken by the government because it is said (brief p. 8): "In this case, the payment was made to a shipping agent in the port of New York, and was a police regulation which was within the power of Congress to pass."

It seems unnecessary for us to argue to this court in answer to that position that Congress possesses no general police power, as that power is reserved to the several states. It is true that where Congress possesses the power of legislation under the commerce clause, its power is plenary and is as broad in its scope as the police power of the various States. But Congress possesses this plenary power only where the subject matter of the contract is commerce, as construed by this court. This brings us back to one of the fundamental points in the case; that is, whether the contract entered into by the

libellants with the bark, "Eudora," was commerce or whether it was merely a contract incidental to commerce. If the contract is not commerce it must be conceded that it is not within the domain of congressional legislation.

HORACE L. CHEYNEY,
JOHN F. LEWIS,
*Counsel for Appellee.*

Supreme Court U. S.
FILED
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JAMES H. MCKENNEY,
Clerk.

# In the Supreme Court of the United States.

October Term, 1902.

R. M. PATTERSON, Receiver of Assets, Over Freedom of [illegible],

vs.

THE BANK OF [illegible], Assignee of C. Nelson et [illegible].

No. 175.

## BRIEF FOR THE UNITED STATES.

# In the Supreme Court of the United States.

OCTOBER TERM, 1902.

B. M. PATTERSON, EDWARD JANSEN, SVEN Freeman, et al., appellants,
*v.*
THE BARK "EUDORA," WHEREOF ALFRED E. Dickson is master.
No. 278.

## BRIEF FOR THE UNITED STATES.

The United States, through the Attorney-General, respectfully asks leave to submit the within brief in the above-entitled case, in support of the contention urged in this court by the appellants. It is prompted to do so because of the interest which the United States necessarily has in the efficiency of its shipping laws. In the matter of shipping the United States is brought into very close touch with other nations, and between it and them exist reciprocal rights and obligations with respect to protecting the ships and seamen of each nation while in the ports of the other; and officials of the Government, both of the Treasury Department and of the Department of Justice, are of the opinion that the efficiency of the act of December 21, 1898, would be materially impaired if the construction and limitation put upon it by the learned judge in the court

below were sustained by this court. The execution of the law is in charge of the Bureau of Navigation of the Treasury Department, and the importance of the question in the case at bar to the Government so impressed the Treasury Department that the Secretary of the Treasury addressed the following letter:

WASHINGTON, *November 10, 1902*

To the Honorable

The ATTORNEY-GENERAL.

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ultimo, in reply to this Department's letter of the 18th ultimo, in regard to the case of *B. W. Patterson et al.* v. *The Bark Eudora*, No. 278, upon the docket of the Supreme Court.

About 90 per cent of the foreign commerce of the United States is conducted by foreign vessels. A law for the protection of seamen and for the suppression of crimping and similar abuses connected with the shipment of seamen in the United States, to be efficacious, should apply to the crews of foreign as well as of American vessels. Section 24 of the act of December 21, 1898, relating to the allotment of seamen's wages, is a measure to suppress crimping. The Department adopted the decisions of the United States district court for the district of Delaware (*Wm. Chambers* v. *British S. S. Kestor*), that this section applies to the crews of foreign as well as of American vessels. A copy of that decision is inclosed. In endeavoring to enforce the law the Department is, however, embarrassed by the conflicting decision of the

United States district court for the eastern district of Pennsylvania in the *Eudora* case, now before the Supreme Court on appeal.

The ambassadors of Great Britain, Germany, and France during the current year have brought to the notice of the State Department the crimping and desertion of seamen from foreign vessels, and these matters have been considered in correspondence between that Department, your Department, and the Treasury Department. Until the application of section 24 of the act of December 21, 1898, has been finally determined, this Department's efforts to check the alleged abuses of which complaint is made, are hampered by uncertainty. This Department, accordingly, desires that the Government shall take part in the *Eudora* case, and would be gratified if, on further consideration, your Department could see its way clear to ask that the case be advanced for an early hearing.

Respectfully,

H. A. TAYLOR,
*Acting Secretary.*

At the request, therefore, of the Treasury Department, and with the belief that if the decision of the lower court be sustained in the Supreme Court, that the efficiency of the shipping laws will be materially impaired, I submit this brief for the consideration of the court.

The careful argument of the proctor for the libellants relieves me of the necessity of arguing the legal question at any length. It fully cites both the principles of construction which should govern the case, and the

authorities which support them. To amplify or to restate what has been so well said would seem wholly unnecessary. I will, therefore, simply suggest a few considerations in addition to those already suggested in the appellants' brief.

The Government believes that the contention of the appellants should be sustained and the case should be reversed. The Bureau of Navigation, which was charged with the enforcement of the law, acting upon the construction given to the statute in the case of the *Kestor* (110 Fed., 432), has applied the section in question to foreign vessels. In so doing it has not violated the comity of nations or, indeed, taken any position that is antagonistic to the wishes of such other nations.

The inhibition by Congress of the prepayment of wages of seamen is primarily for the protection of the seaman and secondarily to prevent crimping. A "crimp" is one who decoys or entices away seamen from a vessel. It is a notorious abuse at all of the large ports of entry throughout the world, and by reciprocal arrangements the various nations have sought to prevent these men, who prey upon the credulity or necessities of the seamen and try to buy and sell them as so many bales of merchandise. One of the commonest methods whereby the crimp gets the seaman in his power is to advance money to him on account of his prospective wages. Sections 4601 and 4606, Revised Statutes, were designed to prevent other methods of crimping, but they were not specifically extended

to foreign vessels, and were held in the case of *Grant* v. *United States* (58 Fed., 594) not to be applicable to foreign vessels. The court said (p. 696):

> By the act of June 9, 1874 (18 Stat., 64), and again by the act of August 19, 1890 (1 Supp. Rev. Stat. (2d ed.), 780), Congress has declared the effect to be given to the shipping laws upon domestic vessels in the coasting trade. But notwithstanding the fact that public attention was, by the opinions above quoted from, called to the omission to extend these laws to foreign vessels and seamen, it has failed to change them, in this respect, either in the revision or subsequent amendments. From this we think that acquiescence on the part of the legislative branch of the Government in the interpretations given by Story and Williams may be fairly inferred. Judge Deady gives excellent reasons for the making of suitable laws for the protection of foreign seamen and vessels in our ports, and the case at bar illustrates the vicious practices to which he alludes. The plaintiff in error is guilty of enticing men to abandon employment for which they were engaged, and to remain idle at his boarding house until after the *Invergarry* had gone to sea, thereby causing expense to the ship and loss of time and wages to the men, while he doubtless profited by shipping them on other vessels. Such acts are reprehensible, and prejudicial to all classes of persons connected with the shipping interests of the country. But the evil of permitting such offenses to go unpunished is not greater than the demoralizing effect of a decision which adds

> to or takes from the law. If the laws which we have are found to be insufficient, when fairly interpreted, Congress should be called upon to amplify them.

The acts of June 26, 1884, and June 19, 1886, did contain specific clauses which expressly or impliedly extended certain of the provisions of these acts, with reference to the shipment of seamen, to foreign vessels.

The act of December 21, 1898, now under consideration, was designed to codify existing statutes, both with respect to domestic vessels and foreign vessels in American ports. Section 24, which is under consideration in the case at bar, specifically forbade the prepayment of wages to a seaman, or to any other person for him. And Congress, possibly having in mind the statement in *Grant* v. *United States* as to the failure of Congress to extend similar legislation to foreign vessels, specifically provided by section f:

> That this section shall apply as well to foreign vessels as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation; provided that treaties in force between the United States and foreign nations do not conflict.

Far from this provision being hostile to the views of other countries, Germany, England, and France have all addressed diplomatic communications to the Secretary of State, which in turn have been transmitted to

the Department of Justice, in which complaint is made that in certain ports of the United States the penal clauses of the act now under consideration have not been enforced, and at the request of these Governments instructions were issued to United States attorneys to enforce section 24, of the act of December 21, 1898, against all who violated its provisions.

It is true that the case at bar does not present one of crimping. The section is broad enough to reach the crimps, for it provides that "any person" who prepays a seaman money shall be subjected to a fine, and, as previously stated, a prepayment to the seaman is a common method whereby the "crimps" get the seaman in their power. If the act does not apply to seamen shipping on foreign vessels for one purpose it does not as to the other purpose. If, therefore, the decision of the lower court shall be sustained—that it applies only to domestic vessels—the Government can not reach the "crimps" in the manner in which they must commonly work, namely, by the prepayment of wages to seamen.

Moreover, as 90 per cent of all commerce in our ports is conducted in foreign vessels, it must be obvious that their exemption from these shipping laws will go far to embarrass domestic vessels in obtaining their quota of seamen. To the average sailor it is a consideration while in port to have his wages in part prepaid, and if in a large port like New York 90 per cent of the vessels are permitted to prepay such seamen as ship upon them, and the other 10 per cent, being

American vessels, can not thus prepay, it will be ex ceedingly difficult for American vessels to obtain crews This practical consideration, presumably, appealed t Congress and fully justified the provision herein con tained. The purpose to extend it to foreign vessel seems to be as clear as language can make it, and fail to understand why one portion of a somewha vague and indefinite title should be construed to limi the explicit language of section f.

So far as regards the constitutional power of Con gress to pass the act in question, I need add nothing t that which has been said in the appellants' brief, ex cept to say that Congress can place an embargo upon foreign commerce, whether conducted in foreign o domestic vessels, and can clearly prescribe the condi tions upon which foreign vessels may touch at our ports and enter and ship their crews in our ports Given this power to control and regulate the shipment of crews on foreign vessels in our ports it must equally have the power to forbid the advance payment o wages. In this case the payment was made to a ship ping agent in the port of New York, and was a police regulation which was within the power of Congress to pass.

But little, indeed, can be added to the appellants' brief, and to the clear and convincing opinion of Judge Bradford in the *Kestor* case. The latter seems to me unanswerable, and, in lieu of an extended argument, I respectfully ask that the court will read this able and carefully considered opinion, which the Government adopts as its argument in the case at bar.

As the record in this case does not contain the opinion of Judge McPherson, of the district court of the eastern district of Pennsylvania (110 Fed., 530), for the convenience of the court I attach a copy of said opinion as an appendix to this brief.

Respectfully submitted.

JAMES M. BECK,
*Assistant Attorney-General.*

# APPENDIX.

J. B. McPHERSON, *District Judge.* The parties to this suit have agreed upon the following facts:

It is stipulated that at the argument of the above case the following facts shall be admitted with the same effect as if proved by depositions taken in accordance with the provisions of the Revised Statutes or the rules of this court:

(1) That the bark *Eudora* at the time hereinafter mentioned was a British vessel, duly registered under the laws of Great Britain, and hailing from the port of Halifax, Nova Scotia.

(2) That on January 22, 1900, the said bark was in the port of New York, and being about to proceed to sea, B. M. Patterson, Edward Jansen, Sven Freeman, E. Thompson, Simon Anderson, and Carl Stevenson, the libelants, one or more of whom were American citizens, shipped as seamen thereon, signing the written shipping articles required by the British law, for a voyage from Portland, Me., to Rio, and for any ports or places within the limits of 65 degrees north and 70 degrees south latitude, trading to and fro as required, not to exceed twelve calendar months, final port of discharge to be in the United States of America or Canada, at the rate of "1 shilling for forty-five days, and $20 per month thereafter."

(3) That at the time said shipping articles were signed the sum of $20 was paid on account of each of the libelants, and with the consent of each of them, to the shipping agent

through whom they had been employed by the master of said bark. Said payments were made on account of indebtedness due by the said libelants to the shipping agent for board and for goods sold to them by him.

(4) That, as required by the laws of Great Britain, the said seamen were engaged in the presence of the British vice consul at the port of New York, and said contract was made with his sanction.

(5) That thereafter said vessel proceeded upon a voyage to Turk's Island, and thence to Philadelphia, when and where said voyage was completed and the said libelants were discharged; that during the whole time the libelants were in the service of said vessel they performed their duties as seamen; that at the time of the arrival of said ship at Philadelphia, and at the time they were discharged, no wages were due to the libelants by the terms of the contract contained in said shipping articles.

(6) That the libelants each claim to recover the sum of $26.66⅔, being wages at the rate of $20 per month from the time of shipment on January 22, 1900, until the date of their discharge on March 3, 1900.

(7) That Karl Svenson, one of the libelants, designated in the libel as Carl Stevenson, has signed the shipping articles at the British consulate, in Philadelphia, acknowledging the receipt of all wages due him for said voyage, and freeing the bark from all liability therefor.

(8) That proof of the law of Great Britain is waived, and it is agreed that the law thereof as contained in the printed reports, statutes, and text-books shall be received with the same effect as if regularly proved, subject, however, to the right of the libelants to object thereto upon any other ground than the mere formality of proof.

(9) The contract specified in said shipping articles, and the payment of said sum of $20 to the said shipping agent, were not contrary to or prohibited by the laws of Great Britain; but it is admitted, for the purposes of this case, that said payment is contrary to the act of Congress of December 21, 1898, if that act is properly applicable to the contract in this case.

The purpose of the suit is to obtain a decision upon the scope of section 24 of the act of December 21, 1898 (30 Stat., 763), which forbids the payment of a seaman's wages in advance to himself or to any other person, and especially to obtain a decision upon the scope of clause "f" of that section, which declares "that this section shall apply as well to foreign vessels as to vessels of the United States; and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation, provided that treaties in force between the United States and foreign nations do not conflict."

There is no formal treaty between Great Britain and the United States upon this subject, and the question must be determined by the application of general legal principles. In my opinion, the suit can not be maintained, for at least two of the reasons urged at the argument by counsel for the ship, namely: First, because the act of 1898 does not apply to the libelants; and, second, because it is not within the power of Congress to regulate the internal affairs of a vessel sailing under a foreign flag. I regard both these propositions as established by the Supreme Court of the United States in *Ross* v. *McIntyre* (140 U. S., 453; 11 Sup. Ct., 897; 35 L. Ed., 581), and for that reason

I shall not discuss them. It is enough, I think, merely to say in support of the first proposition that the act of 1898 does not apply to the libelants, because the statute, as its title declares, is intended to "amend the laws relating to American seamen, for the protection of such seamen, and promote commerce;" and it can not, therefore, apply to seamen, even if they are American by birth or naturalization, that have regularly shipped upon a British vessel, and have thereby become British seamen for the time being. In support of the second proposition, it may be added that a foreign vessel is a part of the territory of the country to which she belongs, and that Congress has no inherent power to control or prescribe rules for her domestic affairs, such as the terms upon which she ships her crew, or the wages she agrees to pay. In certain respects, a foreign ship in our ports is, no doubt, subject to the laws of the United States; but the government and payment and treatment of the crew are matters that are properly held to concern the ship and the crew alone, subject to the law of the flag.

The libel must be dismissed, but without costs.

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# Supreme Court of the United States.

No. 278.—October Term, 1902.

B. M. Patterson, Edward Jansen, Sven Freeman, et al., Appellants, *vs.* The Bark "Eudora," whereof Alfred E. Dickson is Master. } On a certificate from the United States Circuit Court of Appeals for the Third Circuit.

[June 1, 1903.]

On December 21, 1898, (30 Stat. 755, 763,) Congress passed an act entitled "An act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce." The material portion thereof is found in section 24, which amends section 10 of chapter 121 of the laws of 1884, so as to read:

"Sec. 10. (*a*) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages to any other person. Any person paying such advance wages shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages shall in no case, excepting as herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be liable to a penalty of not more than one hundred dollars.

"(*f*) That this section shall apply as well to foreign vessels as to vessels of the United States; and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for a similar violation; provided that treaties in force between the United States and foreign nations do not conflict."

The appellants were seamen on board the British bark Eudora, and filed this libel for wages in the District Court of the United States for the Eastern District of Pennsylvania. By an agreed statement of facts it appears that on January 22, 1900, they shipped on board such bark to serve as seamen for and during a voyage from Portland, Maine, to Rio

and other points, not to exceed twelve months, the final port of discharge to be in the United States or Canada, with pay at the rate of one shilling for forty-five days and twenty dollars per month thereafter. At the time of shipment twenty dollars was paid on account of each of them, and with their consent, to the shipping agent through whom they were employed. On the completion of the voyage they, having performed their duties as seamen, demanded wages for the full term of service, ignoring the payment made at their instance to the shipping agent. The advanced payment and contract of shipment were not contrary to or prohibited by the laws of Great Britain. It was contended, however, that they were prohibited by the act of Congress, above quoted, and that such act was applicable. The District Court entered a decree dismissing the libel. (110 Fed. Rep. 430.) On appeal to the Circuit Court of Appeals for the Third Circuit that court certified the following questions to this court:

"First. Is the act of Congress of December 21, 1898, properly applicable to the contract in this case?

"Second. Under the agreed statement of facts above set forth, upon a libel filed by said seamen, after the completion of the voyage, against the British vessel, to recover wages which were not due to them under the terms of their contract or under the law of Great Britain, were the libellants entitled to a decree against the vessel?"

Mr. Justice BREWER delivered the opinion of the Court.

Applying the ordinary rules of construction, it does not seem to us doubtful that the act of Congress, if within its power, is applicable in this case. The act makes it unlawful to pay any seaman wages in advance, makes such payment a misdemeanor, and in terms provides that such payment shall not absolve the vessel or its master or owner for full payment of wages after the same shall have been actually earned. And further, it declares that the section making these provisions shall apply as well to foreign vessels as to vessels of the United States, provided that treaties in force between the United States and foreign nations do not conflict. It is true that the title of the act of 1898 is "An act to amend the laws relating to American seamen," but it has been held that the title is no part of a statute, and cannot be used to set at naught its obvious meaning. The extent to which it can be used is thus stated by Chief Justice Marshall in *United States* v. *Fisher* (2 Cranch, 358, 386):

"Neither party contends that the title of an act can control plain words in the body of the statute; and neither denies that, taken with other parts, it may assist in removing ambiguities. Where the intent is plain nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice and will have its due share of consideration."

See also *Yazoo Railroad* v. *Thomas*, (132 U. S. 174, 188;) *United States* v. *Oregon &c. Railroad*, (164 U. S. 526, 541;) *Price* v. *Forrest*, (173 U. S. 410, 427;) Endlich on Interpretation of Statutes, secs. 58, 59. When, as here, the statute declares in plain words its intent in reference to a prepayment of seamen's wages, and follows that declaration with a further statement that the rule thus announced shall apply to foreign vessels as well as to vessels of the United States, it would do violence to language to say that it was not applicable to a foreign vessel.

But the main contention is that the statute is beyond the power of Congress to enact, especially as applicable to foreign vessels. It is urged that it invades the liberty of contract which is guaranteed by the Fourteenth Amendment to the Federal Constitution, and reference is made to *Allgeyer* v. *Louisiana*, (165 U. S. 578, 589,) in which we said:

"The liberty mentioned in that amendment means not only the right of the citizen to be free from mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

Further, that even if the contract be one subject to restraint under the police power, that power is vested in the States and not in the general government, and any restraint, if exercised at all, can only be exercised by the State in which the contract is entered into; that the only jurisdiction possessed by Congress in respect to such matters is by virtue of its power to regulate commerce, interstate and foreign; that the regulation of commerce does not carry with it the power of controlling contracts of employment by those engaged in such service, any more than it includes the power to regulate contracts for service on interstate railroads, or for the manufacture of goods which may be intended for interstate or foreign commerce; and, finally, that the validity of a contract is to be determined by the law of the place of performance, and not by that of the place of the contract; that the contract in this case was one entered into in the United States, to be performed on board a British vessel, which is undoubtedly British territory, and therefore its validity is to be determined by British law, and that, as conceded in the question, sustains its validity.

We are unable to yield our assent to this contention. That there is, generally speaking, a liberty of contract which is protected by the Fourteenth Amendment, may be conceded, yet such liberty does not extend to all contracts. As said in *Frisbie* v. *United States* (157 U. S. 160, 165):

"While it may be conceded that, generally speaking, among the inalienable rights of the citizen is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of

government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessaries of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that, generally speaking, every citizen has a right freely to contract for the price of his labor, services or property."

And that the contract of a sailor for his services is subject to some restrictions was settled in *Robertson* v. *Baldwin*, (165 U. S. 275,) in which sections 4598 and 4599, Rev. Stat., in so far as they require seamen to carry out the contracts contained in their shipping articles, were held not to be in conflict with the Thirteenth Amendment, and in which a deprivation of personal liberty not warranted in respect to other employes was sustained as to sailors. We quote the following from the opinion (p. 282):

"From the earliest historical period the contract of the sailor has been treated as an exceptional one, and involving, to a certain extent, the surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some guaranty, beyond the ordinary civil remedies upon contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Molloy forcibly expresses it, 'to rot in her neglected brine.' Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and, in some cases, the safety of the ship itself. Hence, the laws of nearly all maritime nations have made provision for securing the personal attendance of the crew on board, and for their criminal punishment for desertion, or absence without leave during the life of the shipping articles."

If the necessities of the public justify the enforcement of a sailor's contract by exceptional means, justice requires that the rights of the sailor be in like manner protected. The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial contro- and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation.

Neither do we think there is in it any trespass on the rights of the States. No question is before us as to the applicability of the statute to contracts of sailors for services wholly within the State. We need not determine whether one who contracts to serve on a steamboat between New York and Albany, or between any two places within the limits of a State, can avail himself of the privileges of this legislation, for the services contracted for in this case were to be performed beyond the limits of any single State and in an ocean voyage. Contracts with sailors for their services are, as we have seen, exceptional in their character, and may be subjected to special restrictions for the purpose of securing the full and safe carrying on of commerce on the water. Being so subject, whenever the contract is for employment in commerce, not wholly within the State, legislation enforcing such restrictions comes within the domain of Congress, which is charged with the duty of protecting foreign and interstate commerce.

Finally, while it has often been stated that the law of the place of performance determines the validity of a contract, (*London Assurance* v. *Companhia de Moagens*, 167 U. S. 149, 160,) yet that doctrine does not control this case. It may be remarked in passing that it does not appear that the contract of shipment or the advance payment were made on board the vessel. On the contrary, the stipulated fact is that the "seamen were engaged in the presence of the British vice consul at the port of New York." The wrongful acts were, therefore, done on the territory and within the jurisdiction of the United States. It is undoubtedly true that for some purposes a foreign ship is to be treated as foreign territory. As said by Mr. Justice Blackburn, in *Queen* v. *Anderson*, (L. R. 1 Crown Cases, Reserved, 161,) "A ship, which bears a nation's flag, is to be treated as a part of the territory of that nation. A ship is a kind of floating island." Yet when a foreign merchant vessel comes into our ports, like a foreign citizen coming into our territory, it subjects itself to the jurisdiction of this country. In *Schooner Exchange* v. *M'Faddon*, (7 Cranch, 116, 136, 146,) this court held that a public armed vessel in the service of a sovereign at peace with the United States is not within the ordinary jurisdiction of our tribunals while within a port of the United States. In the opinion, by Chief Justice Marshall, it was said that "the jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source.

This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood, not less obligatory." And, again, after holding it "to be a principle of public law, that national ships of war, entering the port of a friendly power open for their reception, are to be considered as exempted by the consent of that power from its jurisdiction," he added: "Without doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction either by employing force, or by subjecting such vessels to the ordinary tribunals."

Again, in *Wildenhus's Case*, (120 U. S. 1,) in which the jurisdiction of a State court over one charged with murder, committed on board a foreign merchant vessel in a harbor of the State, was sustained, it was said by Mr. Chief Justice Waite (pp. 11, 12):

"It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement. . . . From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged, as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquility of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemption from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority."

It follows from these decisions that it is within the power of Congress to prescribe the penal provisions of section 10, and no one within the jurisdiction of the United States can escape liability for a violation of those provisions on the plea that he is a foreign citizen or an officer of a foreign merchant vessel. It also follows that it is a duty of the courts of the United States to give full force and effect to such provisions. It is not pretended that this government can control the action of foreign tribunals. In any case presented to them they will be guided by their own views of the law and its scope and effect, but the courts of the United States are bound to accept this legislation and enforce it whenever its provisions are violated. The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which those vessels belong may be withdrawn. Indeed, the im-

plied consent to permit them to enter our harbors may be withdrawn, and if this implied consent may be wholly withdrawn it may be extended upon such terms and conditions as the government sees fit to impose. And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign as well as to domestic vessels. Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions the courts are not at liberty to dispense with. The interests of our own shipping require this. It is well said by counsel for the government in the brief which he was given leave to file

"Moreover, as ninety per cent of all commerce in our ports is conducted in foreign vessels, it must be obvious that their exemption from these shipping laws will go far to embarrass domestic vessels in obtaining their quota of seamen. To the average sailor it is a consideration while in port to have his wages in part prepaid, and if in a large port like New York ninety per cent of the vessels are permitted to prepay such seamen as ship upon them, and the other ten per cent, being American vessels, cannot thus prepay, it will be exceedingly difficult for American vessels to obtain crews. This practical consideration, presumably, appealed to Congress and fully justified the provision herein contained."

We are of the opinion that it is within the power of Congress to protect all sailors shipping in our ports on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or of a foreign nation, and that our courts are bound to enforce those provisions in respect to foreign equally with domestic vessels.

The questions, therefore, certified by the Court of Appeals will each be answered in the affirmative.

Mr. Justice HARLAN concurred in the judgment.

True copy.

Test:

*Clerk Supreme Court, U. S.*